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WITHDRAWAL SHEET

Ronald Reagan Library

Collection: ROBERTS, JOHN G. JR.: Files

Archivist: kdb

File Folder: Fair Housing [2] 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 Amendments of 1983" for Transmittal to Congress by the President (page 2 only)	6/14/83	P5 CAS 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

April 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Presidential Remarks for Signing
Ceremony for Fair Housing Month

Richard Darman has requested your comments on the above-referenced remarks by 1:00 p.m. today. The remarks praise the passage of the first fair housing law -- Title VIII of the Civil Rights Act of 1968, review Administration efforts to promote fair housing, and urge passage of the Administration's proposed amendments to toughen the fair housing laws.

The first sentence refers to the right to fair housing as a "fundamental" right. I would change this to "basic" right, since "fundamental right" is a legal term of art in constitutional analysis, and the right to fair housing is not such a "fundamental right."

At the bottom of page 1, the remarks quote the opening section of Title VIII, 42 U.S.C. § 3601: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." The remarks introduce this quotation by stating: "The words of Title VIII were simple, but profound." That may be true of the opening section, but it is hardly true of Title VIII, an exceedingly complicated regulatory statute. I would insert "opening" between "The" and "words."

The first full sentence on page 2 compounds this error by stating "From Maine to California, those few words made it unlawful to discriminate in housing on the basis of race, color, religion, or national origin." Those "few words" did nothing of the sort; indeed, such a statement of policy makes nothing unlawful. I would change "those few words" to "Title VIII." Title VIII applies to Alaska and Hawaii as well as the continental United States; I would suggest changing "From Maine to California" to "From Maine to Hawaii."

The last sentence of the carryover paragraph at the top of page 2 states: "And the law soon became crucial in protecting the rights not only of black Americans, but of all minorities -- including single mothers, the elderly, and the

handicapped." This is untrue. Title VIII was amended in 1974 to cover gender discrimination, but has never covered age discrimination or discrimination on the basis of handicap. Indeed, one of the Administration's proposals pending before Congress is to extend the law to cover the handicapped. I would change this sentence to read: "And the law was soon amended to prohibit discrimination on the basis of sex as well."

In the last paragraph on page 2, the remarks state that our proposals "would impose civil penalties of \$50,000 for a first conviction of housing discrimination and of \$100,000 for a second conviction." This should be changed to "would impose civil penalties of up to \$50,000 for a first offense of housing discrimination and of up to \$100,000 for a second offense."

Attachment

THE WHITE HOUSE

WASHINGTON

April 9, 1984

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT
AND DIRECTOR OF SPEECHWRITING

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks for Signing
Ceremony for Fair Housing Month

Counsel's Office has reviewed the above-referenced draft remarks. In the first sentence, we recommend changing "fundamental" to "basic," to avoid using the legal term of art "fundamental right."

On page 1, line 23, we recommend inserting "opening" between "The" and "words." The quoted language is only the opening section of Title VIII; Title VIII as a whole is an exceedingly complex regulatory statute that can hardly be characterized as "simple."

On page 2, line 2, we suggest changing "From Maine to California" to "From Maine to Hawaii," and changing "those few words" to "Title VIII." The law applies to Hawaii and Alaska as well as the continental United States, and it is Title VIII as a whole -- not "those few words" that are quoted -- that makes housing discrimination unlawful.

We would change the second full sentence on page 2 to read: "And the law was soon amended to prohibit discrimination on the basis of sex as well." Title VIII was amended in 1974 to cover sex discrimination in housing, but does not by its terms cover age discrimination or discrimination on the basis of handicap. Indeed, there is pending an Administration proposal to extend the law to cover the handicapped.

On page 2, line 18 and line 19, "up to" should be inserted before the monetary figures, and "conviction" should be changed to "offense."

cc: Richard G. Darman

FFF:JGR:ph 4/9/84

cc: FFFielding/JGRoberts/Subject/Chron.

THE WHITE HOUSE

WASHINGTON

April 9, 1984

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT
AND DIRECTOR OF SPEECHWRITING

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks for Signing
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We would change the second full sentence on page 2 to read: "And the law was soon amended to prohibit discrimination on the basis of sex as well." Title VIII was amended in 1974 to cover sex discrimination in housing, but does not by its terms cover age discrimination or discrimination on the basis of handicap. Indeed, there is pending an Administration proposal to extend the law to cover the handicapped.

On page 2, line 18 and line 19, "up to" should be inserted before the monetary figures, and "conviction" should be changed to "offense."

cc: Richard G. Darman

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

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

Subject: Remarks: Signing Ceremony for Fair Housing Month

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>CUTOLL</u>		ORIGINATOR	<u>84 04 09</u>			<u>1/1</u>
<u>CURT 18</u>		Referral Note: <u>D</u>	<u>84 10 4 09</u>		<u>S</u>	<u>84 10 4 09</u>
<u>CURT 17</u>		Referral Note: <u>I</u>	<u>84 04 09</u>			<u>1:00pm</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
 B - Non-Special Referral
 C - Completed
 S - Suspended

FOR OUTGOING CORRESPONDENCE:

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

Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 4/9/84 ACTION/CONCURRENCE/COMMENT DUE BY: 1:00 P.M. TODAY

SUBJECT: REMARKS: SIGNING CEREMONY FOR FAIR HOUSING MONTH

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McMANUS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>	ELLIOTT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	TUTWILER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JENKINS	<input type="checkbox"/>	<input type="checkbox"/>	WIRTHLIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			HENKEL	<input type="checkbox"/>	<input type="checkbox"/>
			FISCHER	<input type="checkbox"/>	<input checked="" type="checkbox"/>

REMARKS:

RESPONSE:

1984 APR -9 AM 9:57

Richard G. Darman
Assistant to the President
Ext. 2702

Received
1984 APR -9 AM 9:33

(Robinson/BE)
April 9, 1984
9:30 a.m.

PRESIDENTIAL REMARKS: SIGNING CEREMONY FOR FAIR HOUSING MONTH
TUESDAY, APRIL 10, 1984

Secretary Pierce, ladies and gentlemen, I'm delighted to join you today as our Nation observes the sixteenth anniversary of the law that guarantees one of the most fundamental American rights -- the right to fair housing. ✓

Just a generation ago, nearly one in ten Americans were forced to live lives that were separate and unequal. Most black Americans were taught in segregated schools. Many could find only poor jobs, toiling for low wages. They were refused entry into hotels and restaurants. And across the country, when they wanted to buy a house or rent an apartment, they were too often told that black people were unwelcome.

This glaring injustice gave rise to a dramatic movement for civil rights. Men and women of integrity and courage organized boycotts, rallies, and marches. Often they were beaten and imprisoned, but they remained devoted to their cause. "Work with the faith," Dr. Martin Luther King, Jr. told his followers, "that unearned suffering is redemptive."

The struggle for equality of rights moved our Nation to the very depths of its soul. Throughout the land, people began to treat each other not as blacks and whites, but as fellow Americans. In 1968, an historic Civil Rights Bill was passed, and it is Title VIII of that act that we honor here today.

The words of Title VIII were simple, but profound. "It is the policy of the United States to provide, within constitutional

limitations, for fair housing throughout the United States." ✓

^ From Maine to California, those few words made it unlawful to discriminate in housing on the basis of race, color, religion, or national origin.^ No black American could ever again be denied housing because of the color of his skin. ^ And the law soon became crucial in protecting the rights not only of black Americans, but of all minorities -- including single mothers, the elderly, and the handicapped. ^ ?

Today our country is more committed to fair housing than ever. State and local fair housing laws that are substantially equivalent to the Federal law have increased from 21 in 1970 to 82 today. At the national level, the Department of Housing and Urban Development under Secretary Pierce is aggressively investigating complaints of housing discrimination.

Perhaps most important, our Administration has proposed legislation to give the fair housing law tougher enforcement. Among other changes in the present law, our legislation would impose civil penalties of \$50,000 for a first conviction of housing discrimination, and of \$100,000 for a second conviction; allow individual as well as pattern or group complaints to be referred to the Attorney General; and allow complaints to be filed up to 2 years after the alleged offense. We expect the Congress to act on our legislation soon, and I hope you'll give it your support. I've learned that it's not always enough to make legislators see the light. Sometimes we have to make them feel the heat. 1.

Despite the importance of these Government efforts, fair housing can never become a permanent way of life without the involvement of the thousands of contractors, realtors, building managers, and others who make up the housing industry. That's where HUD's Partnerships in Housing program comes in. In Partnerships in Housing, local realtors, chambers of commerce, and other committed groups and citizens are conducting fair housing campaigns at their own expense. On behalf of all Americans, I want to give my heartfelt thanks both to those Secretary Pierce has presented with awards, and to everyone who has participated in Partnerships in Housing.

Celebrities for Housing is another program that has had a powerful impact. When people like Arthur Ashe, Melba Moore, Harry Belafonte, and so many others talk about the importance of fair housing, the whole Nation listens. To all those well-respected and well-loved celebrities who have given so freely of their time and talents to the cause of fair housing, a warm thank you.

Ever since the passage of the Civil Rights Act during this month in 1968, April has traditionally been fair housing month. This April, let us once again dedicate ourselves to the great work of assuring fair housing for all. And let us continue that work until fair housing becomes a permanent reality in our national life. ✓

Thank you and God bless you.

THE WHITE HOUSE

WASHINGTON

July 12, 1983

MEMORANDUM FOR MICHAEL BAROODY
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Revised Fact Sheet Re: Fair
Housing Amendments Act of 1983

Counsel's Office has reviewed the above-referenced revised fact sheet and finds no objection to it from a legal perspective.

cc: Richard G. Darman

FFF:JGR:aw 7/12/83

cc: FFFielding
✓ JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 11, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Fact Sheet Re: Fair Housing
Amendments Act of 1983

Richard Darman has requested comments by 2:00 p.m. today on the above-referenced fact sheet. The fact sheet, prepared by HUD and reviewed by Public Affairs, reviews the highlights of the previously-cleared Administration proposal to strengthen the fair housing laws. I have reviewed the fact sheet and find it to be an accurate representation of the Administration bill. The second "bullet" item notes that our bill would permit the Attorney General to sue "for equitable relief or civil penalty." The "or" should be changed to "and/or."

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: Fact Sheet Re: Fair Housing
Amendments Act of 1983

Counsel's Office has reviewed the above-referenced draft fact sheet, and finds it to be an accurate reflection of the Administration's proposed amendments to the fair housing laws. In the second "bullet" item, however, "equitable relief or civil penalty" should be changed to "equitable relief and/or civil penalty."

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) _____

Name of Correspondent: _____

Richard G. Narman☐ MI Mail Report

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

Subject: _____

*Fact Sheet re: 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
<i>CW Holland</i>		ORIGINATOR	<i>83.07.08</i>			<i>1 1</i>
<i>CW AT18</i>		Referral Note: <i>D</i>	<i>83.07.08</i>			<i>S 83.07.18</i>
		Referral Note:	<i>1 1</i>			<i>1 1</i>
		Referral Note:	<i>1 1</i>			<i>1 1</i>
		Referral Note:	<i>1 1</i>			<i>1 1</i>
		Referral Note:	<i>1 1</i>			<i>1 1</i>

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Comments: _____

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Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: July 8 ACTION/CONCURRENCE/COMMENT DUE BY: 2:00 MONDAY, JULY 11

SUBJECT: FACT SHEET RE FAIR HOUSING AMENDMENTS ACT of 1983

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>BAROODY</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

The attached draft fact sheet was prepared by HUD and reviewed by the Office of Public Affairs. Please provide any comments/edits by 2:00 p.m. on Monday, July 11th. The Fair Housing legislation is scheduled to be transmitted to the Hill the first of next week.

Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President

FACT SHEET

PROPOSED FAIR HOUSING AMENDMENTS OF 1983

In his 1983 State of the Union Message, the President pledged "to strengthen enforcement of fair housing laws for all Americans." The proposed amendments, jointly approved by the Secretary of Housing and Urban Development and the Attorney General, fulfill that promise.

The principal criticism of the Fair Housing Act has been of its enforcement mechanism. The statutory process relies primarily upon conciliation of complaints.

Currently, a victim of discrimination may file a complaint with HUD, which attempts to resolve the complaint through conciliation and persuasion. If this fails, HUD can do nothing further. The person may institute his or her own private suit in Federal District Court, but the Attorney General can bring suit only when a pattern or practice of discrimination seems evident.

The objective of the proposed amendments is to give credibility and effectiveness to the conciliation effort by giving the HUD Secretary a backup mechanism:

- o Upon filing of a complaint, the Secretary would investigate and attempt to conciliate.
- o Under the proposal, if conciliation efforts fail, the Secretary would be authorized to refer the complaint to the Attorney General with a recommendation to commence a District Court action for equitable relief or civil penalty.
- o The proposal authorizes a civil penalty up to \$50,000 and up to \$100,000 for a second offense.

The backup mechanism proposed keeps the burden of enforcement where it belongs -- on the Federal government, not on the individual victim. The authority for a civil penalty emphasizes the public interest at stake in the prevention of discriminatory housing practices.

The proposed amendments contain several other important improvements to the enforcement process, including:

- o Extension of the statute of limitations for private actions from 180 days to 2 years.
- o Authorization of temporary equitable relief through the courts while the conciliation process is proceeding.
- o Authorization of attorney's fees to a prevailing party (other than the United States) without regard to financial need.

- o Confirmation that a conciliation agreement may contain an agreement to submit to binding arbitration.

The proposed amendment would extend coverage of the Act to prohibit discrimination on the basis of handicap. The proposal takes into account problems raised by handicap discrimination and is designed to enhance housing opportunities for handicapped without requiring expenditures by landlords or inflicting unreasonable inconvenience on other tenants.

THE WHITE HOUSE
Office of the Press Secretary

FOR RELEASE AT 11:00 A.M. EDT

July 12, 1983

TO THE CONGRESS OF THE UNITED STATES:

I am transmitting herewith the "Fair Housing Amendments Act of 1983."

The Federal Fair Housing Act was enacted by the Congress 15 years ago. It stands as a bold promise that no person in the United States should be denied full freedom of choice in the selection of housing because of race, color, religion, sex, or national origin. Since its passage, however, a consensus has developed that the Fair Housing Act has delivered short of its promise because of a gap in its enforcement mechanism.

The principal means of redressing violations under the Act is resolution of complaints by the Secretary of Housing and Urban Development through informal methods of conference, conciliation, or persuasion. This informal process is the best and most effective procedure that can be devised for speedy and non-burdensome relief for individual victims of discrimination. It has worked well when it has been approached in good faith by all parties to the dispute. The Secretary achieves conciliation in roughly three-fourths of the cases in which a determination to resolve through conciliation is made, and the success rate of conciliation by State and local agencies to which complaints are referred is comparable. But as few as the cases may be where conciliation is unsuccessful, they are too many.

The gap in enforcement is the lack of a forceful back-up mechanism which provides an incentive to bring the parties to the conciliation table with serious intent to resolve the dispute then and there. When conciliation fails, the Secretary has no place else to go. In those few cases where good will is absent, the exclusive reliance upon voluntary resolution is, in the words of former Secretary Carla Hills, an "invitation to intransigence."

I referred to this widely acknowledged gap in the law in my recent State of the Union message when I said:

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

The central objective of the proposed legislation which I am transmitting today is to supply the missing ingredient to effective enforcement. I propose that when conciliation fails, the Secretary may refer the complaint to the Attorney General with the recommendation that an action be commenced on behalf of the United States in Federal District Court. This expands the current jurisdiction of the Justice Department, now limited to cases of discriminatory patterns or practices,

to include cases involving individual victims of discrimination. It thus places the leadership in enforcement where it belongs, with the Federal Government rather than with the individual victim. And in order to emphasize the clear public interest in the prevention of discriminatory housing practices as well as to add teeth to the enforcement arsenal, it authorizes the Attorney General to seek substantial civil penalties in addition to equitable relief. While the maximum penalties are severe -- as they ought to be in cases of violation of the basic right to be free from illegal discrimination -- the tribunal with power to impose these remedies is that one which has earned and enjoyed the confidence of the American people over our history for its impartiality, independence, and fairness.

I also propose several other important improvements to the enforcement process, including:

- Authorization for the Attorney General to seek specific performance of a conciliation agreement.
- Confirmation that a conciliation may contain an agreement to submit to binding arbitration.
- Authorization of temporary equitable relief through the courts while conciliation attempts are proceeding.
- Conforming the attorneys' fee award provisions to those of the Civil Rights Attorneys Fee Award Act.
- Extension of the statute of limitations for private actions from 180 days to two years.
- Removal of the ceiling on punitive damages obtainable in private enforcement actions.

The proposed legislation also will extend coverage of the Fair Housing Act to prohibit discrimination on the basis of handicap. The need to extend the protection of this statute to the handicapped is a subject on which a clear consensus of the Congress emerged during the unsuccessful attempt to adopt amendments in the 96th Congress.

Reform of the Fair Housing Act is a necessity that is acknowledged by all. I urge that the Congress give these legislative proposals its immediate attention so that early enactment may be achieved.

RONALD REAGAN

THE WHITE HOUSE,
July 12, 1983.

#

file: civil
rights

John G. Roberts

112/0408
July 12, 1983

FAIR HOUSING ACT AMENDMENTS
(Strengthening Civil Rights Enforcement)

In his 1983 State of the Union Message the President pledged "to strengthen enforcement of fair housing laws for all Americans." Today, legislation to amend these laws is being sent to Congress.

The proposed changes to the Fair Housing Act are designed to strengthen the Justice Department and HUD in ending housing discrimination.

- o The principal criticism of the Fair Housing Act has been of its enforcement mechanism. The current process relies primarily upon informal conciliation and persuasion.
- o The Administration's reforms would put the burden of fair housing enforcement where it belongs -- on the Federal government, not the individual victim.

Key provisions include:

- o New authority for the Attorney General to file suit against individual violators.
- o Enforcement authority over conciliation agreements.
- o Civil penalties of up to \$50,000 for the first offense and up to \$100,000 for subsequent violations in a suit brought by the Attorney General.
- o Extension of the statute of limitations from 180 days to 2 years.
- o Elimination of the \$1,000 cap on punitive damages.
- o The Administration also proposes extending coverage of the Fair Housing Act to prohibit discrimination against the handicapped.

July 12, 1983

THE PRESIDENT'S NOMINEES TO THE CIVIL RIGHTS COMMISSION

Key Points:

- o Opponents concede the four nominees are highly qualified.
- o The real sources of controversy are the issues of racial quotas and forced busing which some of the President's critics favor but which the President and his four nominees oppose.
- o The Reagan Administration is committed to civil rights and has compiled an impressive record in enforcement.
 - In 1982, the Justice Department filed more criminal civil rights cases than any previous administration in a comparable time period.
 - Justice has authorized filing 3 school desegregation suits, more than during the same period in the Carter Administration;
 - Justice has been active in more than 100 employment discrimination suits and has filed 14 new suits.

Civil Rights enforcement

- o It's time to set the record straight on the Reagan Administration's commitment to enforcing civil rights. The record is an impressive one.
- o The Administration is fighting discrimination in:
 - Voting -- The Justice Department reviewed the electoral changes made since the 1980 census and objected to 153 submissions under the Voting Rights Act, including redistricting plans in 9 states and New York City.
 - Housing -- Justice conducted 60 investigations of housing discrimination. In addition, the Administration has proposed comprehensive reforms of the Fair Housing Act to put teeth in its enforcement mechanism.
 - Employment -- Justice has been active in more than 100 employment discrimination suits and has filed 14 new suits.
 - School desegregation -- Justice is now investigating 8 school districts suspected of racial discrimination and has authorized filing suit against 3 school districts, more than during the same period in the previous administration.

- Breaking new ground -- The Justice Department's successful suit against the Chicago Park District marks the first time that the federal government has challenged racial discrimination in the allocation of public park resources.

Civil Rights Commission

- o The Civil Rights Commission is a bipartisan group of men and women appointed by the President to offer advice and make studies on civil rights policies.
 - The President's nominees are highly qualified, with an unquestioned commitment to civil rights.
 - All have spent years promoting civil rights and fighting discrimination.
 - Some critics charge the President is "stacking" the Commission. Remains to be seen how it can be stacked with four independent-minded Democrats who have publicly stated policy differences with the Administration.
 - Many opponents of the President's nominees really want to have racial quotas. The President opposes quotas and so do his nominees.
- o The four nominees are:
 - Morris Abram, a lawyer from New York, authored anti-Klan bills in the 40s and 50s, fought and won the "one-man, one vote" case in the Supreme Court, assisted in obtaining release of Martin Luther King from an Atlanta Jail, and served for 9 years as Chairman of the United Negro College Fund.
 - John Bunzel, a California civil rights advocate cited in 1974 by the San Francisco board of supervisors for "unswerving devotion to the highest ideals of brotherhood and service to mankind and dedicated efforts looking to the elimination of racial and religious bigotry and discrimination."
 - Robert Destro, law professor at Catholic University, served as general counsel for the Catholic League for Religious and Civil Rights, where he developed legal services for a nationwide civil rights practice.
 - Linda Chavez, nominated to be staff director, is an assistant to the President of the American Federation of Teachers and editor of the American Educator. She formerly served as a member of the professional staff of the House subcommittee on Civil Rights and Constitutional Rights.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 12, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Revised Fact Sheet Re: Fair
Housing Amendments Act of 1983

Richard Darman has asked that comments on a revised fair housing fact sheet be sent directly to Mike Baroody by 9:00 a.m. tomorrow. The revision reflects the one change we suggested in our July 11 memorandum on the previous draft, and contains two new sections. A new section entitled "Housing Background" reviews HUD's handling of complaints in FY 1982 and the first half of FY 1983. A second new section, "General Background on Civil Rights Enforcement Activities," presents statistical highlights of the Justice Department's civil rights litigation activities, essentially those appearing in the Attorney General's Sunday Post op-ed piece. I have no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

July 12, 1983

MEMORANDUM FOR MICHAEL BAROODY
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Revised Fact Sheet Re: Fair
Housing Amendments Act of 1983

Counsel's Office has reviewed the above-referenced revised fact sheet and finds no objection to it from a legal perspective.

cc: Richard G. Darman

FFF:JGR:aw 7/12/83

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. Dorman☐ MI Mail Report

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

Subject: Revised Fact Sheet re Fair Housing
Amendments Act of 1983

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 Holland</u>	ORIGINATOR	<u>830712</u>		<u>1 / 1</u>
<u>CVAT 18</u>	Referral Note: <u>D</u>	<u>830712</u>		<u>830712</u> <u>9:30 PM</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: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: July 11, 1983

ACTION/CONCURRENCE/COMMENT DUE BY: _____

July 12
9:00 a.m. tomorrowSUBJECT: REVISED FACT SHEET RE FAIR HOUSING AMENDMENTS ACT OF 1983

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BAROODY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

The attached draft fact sheet has been revised to reflect Senior Staff comments on original draft. Also, the "Housing Background" and "General Background on Civil Rights Enforcement Activities" sections are new. Please forward comments/edits on this new fact sheet directly to Mike Baroody, with a copy to my office, by 9:00 a.m. tomorrow. This is for release tomorrow. Thank you.

RESPONSE:

THE WHITE HOUSE
Office of the Press Secretary

July 12, 1983

FACT SHEET

PROPOSED FAIR HOUSING AMENDMENTS OF 1983

In his 1983 State of the Union Message, the President pledged "to strengthen enforcement of fair housing laws for all Americans." The proposed amendments, jointly developed for the President by the Secretary of Housing and Urban Development and the Attorney General, fulfill that promise.

The principal criticism of the Fair Housing Act has been of its enforcement mechanism. The statutory process relies primarily upon conciliation of complaints.

Currently, a victim of discrimination may file a complaint with HUD, which attempts to resolve the complaint through conciliation and persuasion. If this fails, HUD can do nothing further. The person may institute his or her own private suit in Federal District Court, but the Attorney General can bring suit only when a pattern or practice of discrimination seems evident.

The objective of the proposed amendments is to give credibility and effectiveness to the conciliation effort by giving the HUD Secretary a backup mechanism:

- o Upon filing of a complaint, the Secretary would investigate and attempt to conciliate.
- o If conciliation efforts fail, the Secretary would be authorized to refer the complaint to the Attorney General with a recommendation to commence a District Court action for equitable relief and/or civil penalty.
- o The proposal authorizes a civil penalty up to \$50,000 and up to \$100,000 for a second offense.

The backup mechanism proposed keeps the burden of enforcement where it belongs -- on the Federal government, not on the individual victim. The authority for a civil penalty emphasizes the public interest at stake in the prevention of discriminatory housing practices.

The proposed amendments contain several other important improvements to the enforcement process, including:

- o Extension of the statute of limitations for private actions from 180 days to 2 years.
- o Authorization of temporary equitable relief through the courts while the conciliation process is proceeding.
- o Authorization of attorney's fees to a prevailing party (other than the United States) without regard to financial need.
- o Confirmation that a conciliation agreement may contain an agreement to submit to binding arbitration.

The proposed amendment would extend coverage of the Act to prohibit discrimination on the basis of handicap. The proposal takes into account problems raised by handicap discrimination and is designed to enhance housing opportunities for handicapped without requiring expenditures by landlords or inflicting unreasonable inconvenience on other tenants.

Housing Background

The number of fair housing complaints filed with HUD or with State and local agencies administering "substantially equivalent" State or local fair housing laws was 5,112 in FY 1982, 2,191 in the first half of FY 1983. 2,679 complaints were referred to State and local agencies by HUD in 1982 (52%), 1,330 in the first half of 1983 (61%). (30 States and 40 localities are recognized for referrals by HUD.)

After investigation, a determination to resolve by conciliation is made in about one-third of the cases retained by HUD, and conciliation is successful in about 60%-70% of the attempts (427 successes out of 697 attempts in FY 1982, 183 successes out of 292 attempts in the first half of FY 1983). The success rate of conciliations attempted by State and local agencies is comparable.

The average time elapsed between filing of a complaint and completion of a successful HUD conciliation was 108 days in FY 1982, 82 days in FY 1983. The relief obtained included provision of a dwelling unit for the complainant in approximately 50% of the successful conciliations; in virtually all conciliations, relief also includes cash compensation to the victim for out-of-pocket expenses and for humiliation and mental distress.

GENERAL BACKGROUND ON CIVIL RIGHTS ENFORCEMENT ACTIVITIES

The Reagan Administration is fully committed to enforcing civil rights laws.

The Administration is fighting discrimination in:

- o Voting -- The Justice Department reviewed the electoral changes made since the 1980 census and objected to 153 submissions under the Voting Rights Act, including redistricting plans in 9 States and New York City.
- o Housing -- Justice conducted 60 investigations of housing discrimination and has authorized 9 major suits against both private landlords and municipalities. In addition, the Administration has proposed comprehensive reforms of the Fair Housing Act to put teeth in its enforcement mechanism.
- o Employment -- Justice has been active in more than 100 employment discrimination suits and has filed 14 new suits. Last year, Justice won a back pay award of \$2,750,000 against Fairfax County, Virginia on behalf of 685 women and blacks who were victims of discrimination -- the largest Title VII recovery ever against a public employer.
- o School desegregation -- Justice is now investigating 8 school districts suspected of racial discrimination and has authorized filing suit against 3 school districts, more than during the same period in the previous administration.
- o Breaking new ground -- The Justice Department's successful suit against the Chicago Park District marks the first time that the Federal government has challenged racial discrimination in the allocation of public park resources.

Another suit filed earlier this year against Cicero, Illinois, was the first to combine allegations of employment discrimination and violation of the fair housing laws in a single suit.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

July 12, 1983

FOR: FRED F. FIELDING
FROM: PETER J. RUSTHOVEN *BBB*
SUBJECT: Presidential Radio Talk on
"Fairness," July 9, 1983

As you may recall, we reviewed last week a draft of the above-referenced radio talk, which the President delivered on Saturday, July 9, and which included descriptions of Administration proposals to strengthen the fair housing laws. In my memorandum for you, I advised that the fair housing portions of the draft had been reviewed with John Roberts, who was familiar with the Administration's proposals in this area, and that the statements on this subject in the draft talk were accurate.

The talk as delivered (a copy of which is attached) included the statement, "We're also proposing to extend the current law to prohibit discrimination on the basis of handicap or size of family" (emphasis added). The emphasized phrase is not a part of the Administration's proposals, though it evidently is included in legislation sponsored by Senator Mathias (R.-Md.). The purpose of this memorandum is simply to advise you, in the event questions are asked about this, that the phrase was also not in the draft that John and I reviewed. Reportedly, it was added at the recommendation of the Department of Housing and Urban Development, after the draft had been through White House staffing.

Attachment

cc: John G. Roberts, Jr. *←*

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 9, 1983

RADIO ADDRESS
OF THE PRESIDENT
TO THE NATION

Camp David

12:06 P.M. EDT

THE PRESIDENT: My fellow Americans, in recent weeks even the gloomiest critics have had trouble denying that things are getting better for you and your families. The number of people working is up 1.1 million from last December. Unemployment remains too high, but it's coming down, 9.8 percent in June as announced yesterday.

We're seeing strong economic growth and we're seeing it while inflation is at its lowest level in a decade, 3.5 percent over the last year. This sharply lower inflation and the first decent tax cut since the 1960's are allowing families to keep more of their own earnings to spend or save.

Contrary to propaganda blasts you hear, America is heading in a better direction today than before. For example, thanks to the tax cuts and our progress against inflation, a medium-income family earning \$25,000 has nearly \$600 more in purchasing power today than in 1980. Low-income families are being helped, too. Nothing was more cruel for them than those back-to-back years of double-digit inflation -- before we got here, I hasten to add. If your family was on a fixed income of \$10,000 at the start of 1979, that income was worth less than \$8,000 by the end of 1980. In other words, inflation, which for years had been part of deliberate government economic planning, robbed you of \$2,000. Now, that's not my idea of fairness, and I doubt if it's yours. If you tried to save a dollar at your bank during that same period, it would have lost 20 cents in value.

But we haven't abolished inflation or high taxes, but we're gaining on them. Your after-tax purchasing power helps determine your economic well-being. But this fact is ignored by the big spenders who claim to carry the banner of fairness and compassion. According to them, the whole issue of fairness revolves around government-spending programs and even on government spending. Some of them have been misleading you. You've been led to believe that any budget savings in these programs would hurt the needy, and that's not true.

The problem we set out to solve back when we inherited those record inflation and interest rates was not government doing too much for the needy, but government doing too much for the non-needy. Before our budget reforms were passed, surveys indicated that two out of every five dollars in benefits went to those with total incomes and benefits well above the poverty line. Also, some of the programs to help the poor had the effect of keeping them poor and dependent, robbing them of their self-respect.

America is a wealthy nation, but our wealth is not unlimited. So we've tried to face up to the reality too many have ignored. Unless we prune non-essential programs, unless we end benefits for those who should not be subsidized by their fellow taxpayers, we won't have enough resources

MORE

to meet the requirements of those who must have our help. And helping those who truly need assistance is what fairness in government spending should be all about. We're trying to do this. Let me give you one statistic I doubt you've ever heard.

Our budget request for 1984 would have the federal government spend, after inflation, two-and-a-half times what it spent in 1970 on assistance to the poor. So, while, yes, there have been some cuts, they've been nowhere near as draconian as critics charge. Why haven't you had this information? Maybe one reason is the drumbeat of gloom and doom from misery merchants in some of the media. One major newspaper recently ran an editorial entitled, "Poorer, Hungrier." In 1979, according to this editorial, a team of doctors declared federal food programs had eliminated most of the malnutrition in America. The editorial asked, "What would they find today?" Their answer, of course, was to say that under this administration things had worsened. The truth is low-income Americans are receiving more food assistance in 1983 than ever before in history. During our administration, food assistance has grown by 34 percent. More people are being served and the grants for the needy has to -- been increased. We subsidize in whole or in part 95 million meals a day.

The average Food Stamp benefit per person has grown faster than the increase in food prices through inflation. The infant mortality rate has continued to decline. A greater percentage of school lunch program dollars are dedicated to providing meals for children of low-income families. Subsidies for meals served to children from low-income families have also increased in this administration.

Our administration is also distributing surplus cheese, butter, powdered milk, rice, flour, honey, and corn meal to the needy and elderly. This is in addition to commodities regularly provided to schools and charitable institutions. The total comes to \$1.7 billion so far.

Those budget reductions you've heard so much about have been achieved by improving efficiency, reducing dependency, cutting waste and abuse and targeting on the neediest families. And that's as it should be. We're committed to fairness and we'll continue to take actions needed to bring it about throughout our society.

Next week we'll be taking a new initiative to keep a pledge I made in my State of the Union Address -- the pledge to strengthen enforcement of Fair Housing Laws for all Americans. We believe in the bold promise that no person in the United States should be denied full freedom of choice in the selection of housing because of race, color, religion, sex, or national origin. We're proposing a series of amendments that will put real teeth into the Fair Housing Act. For example, the Justice Department can now act on complaints only when there's reason to believe there exists a practice of discrimination. Under our proposal, if conciliation fails, Secretary Pierce at HUD could forward individual complaints to the Attorney General for litigation. We're also proposing to extend the current law to prohibit discrimination on the basis of handicap or size of family. And our proposal will create substantial civil penalties for landlords and others found violating the law. This will include stiff fines up to \$30,000 for a first offense and \$100,000 for a second offense.

We believe this is an important step for civil rights. For a family deprived of its freedom of choice in choosing a home, our proposal will mean swift action and strong civil penalties to prevent discrimination in the first place. As I said, we're committed to fairness and we're committed to use the full power of the federal government whenever and wherever even one person's constitutional rights are being unjustly denied.

Until next week, thanks for listening and God bless you.

END

12:11 P.M. EDT

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

July 9, 1983

RADIO ADDRESS
OF THE PRESIDENT
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MORE

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Until next week, thanks for listening and God bless you.

END

12:11 P.M. EDT

THE WHITE HOUSE
WASHINGTON

July 11, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Fact Sheet Re: Fair Housing
Amendments Act of 1983

Counsel's Office has reviewed the above-referenced draft fact sheet, and finds it to be an accurate reflection of the Administration's proposed amendments to the fair housing laws. In the second "bullet" item, however, "equitable relief or civil penalty" should be changed to "equitable relief and/or civil penalty."

FFF:JGR:aw 7/11/83

cc: FFFielding
✓ JGRoberts
Subj.
Chron

Fair Housing

THE WHITE HOUSE

WASHINGTON

June 14, 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 comments by close of business June 15 on the Administration's proposed fair housing bill, an accompanying section-by-section analysis, and a draft transmittal message. The bill, of course, is the product of the Cabinet Council on Legal Policy. The materials in question were drafted by Justice and HUD, and have been reviewed by OMB and OPD. We noted no legal objection to the bill when it appeared on the Cabinet Council agenda, although we were given time only for a cursory review.

You will recall that the bill would authorize suit in federal court by the Attorney General in the event of failure of conciliation efforts in cases of individual housing discrimination. Current law authorizes suit only in pattern and practice cases. The Attorney General can seek civil penalties as well as equitable relief. Current law prohibits housing discrimination on the basis of race, color, religion, sex, or national origin; the proposed bill would add handicap to the list. Several other, more minor provisions would make enforcement of the Fair Housing Act easier and more effective.

I have re-reviewed the bill and have reviewed the section-by-section analysis and have no objections. I do, however, have several comments with respect to the transmittal statement:

1. The last full sentence on page 1 states that "It [the bill] thus places the leadership in enforcement where it belongs, with the Federal Government rather than with the individual victim." There is no support for this statement -- in either its factual or normative aspects -- beyond its own ipse dixit. In fact the bill strengthens the right and ability of individual victims to institute private suits for relief. In many areas enforcement of federal rights is advanced most effectively by private suits -- antitrust, securities,

and many areas of civil rights law come to mind -- and there is no reason to suppose housing will be different, particularly with the liberalized attorneys fees provisions in the Administration bill. This statement is, however, an implicit criticism of the rival Mathias bill, which relies on suits by individual victims to a greater extent than the Administration bill. On that basis I suppose it is tolerable.

2. The first full sentence on page 3 justifies the severe penalties in the bill on the ground that such penalties are needed "in cases of violation of the fundamental right to be free from discrimination." There is of course no such right; at the very least "illegal" should modify "discrimination." More significantly, "fundamental right" is a legal term of art, triggering strict judicial scrutiny under the Carolene Products analysis. The Attorney General has frequently criticized "fundamental rights" jurisprudence in the past, and the phrase should not be loosely used. Any synonym that is not a legal term of art could be substituted, such as "basic right."

3. The first full sentence on page 3 also dismisses the problem of the severity of the fines with the comforting assurance that the fines will be imposed by the federal courts, which have "earned and enjoyed the confidence of the American people over our history for [their] impartiality, independence, and fairness." As a statement of historical fact this is untrue. The federal judiciary has been viewed by the American people with active distrust from the very beginning, when the Federalists packed the new courts to thwart the aspirations of Jeffersonian Republicans. I assume the statement is included, however, as another implicit criticism of the Mathias bill, which would create new administrative law judges to apportion fines. Again, on that basis, I suppose it is tolerable.

A memorandum for Darman is attached for your review and signature. On the assumption you concur in the foregoing compromises to advocacy, the memorandum only addresses point 2.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

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

Counsel's Office has reviewed the proposed Fair Housing Amendments of 1983, the accompanying section-by-section analysis, and the draft transmittal message. We have no legal objection to the bill or the section-by-section analysis. With respect to the transmittal message, we recommend changing the phrase "the fundamental right to be free from discrimination" at lines 5-6 on page 3 to "the basic right to be free from illegal discrimination." The term "fundamental right" is a legal term of art, triggering heightened judicial scrutiny in certain circumstances. The Attorney General has frequently criticized "fundamental rights" jurisprudence, and the phrase should not be loosely used in contexts in which its significance might be misinterpreted. The adjective "illegal" should be added to "discrimination" because there is no right to be free from discrimination per se, and only some types of discrimination -- for example, on the basis of race -- are banned.

FFF:JGR:aw 6/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 14, 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 proposed Fair Housing Amendments of 1983, the accompanying section-by-section analysis, and the draft transmittal message. We have no legal objection to the bill or the section-by-section analysis. With respect to the transmittal message, we recommend changing the phrase "the fundamental right to be free from discrimination" at lines 5-6 on page 3 to "the basic right to be free from illegal discrimination." The term "fundamental right" is a legal term of art, triggering heightened judicial scrutiny in certain circumstances. The Attorney General has frequently criticized "fundamental rights" jurisprudence, and the phrase should not be loosely used in contexts in which its significance might be misinterpreted. The adjective "illegal" should be added to "discrimination" because there is no right to be free from discrimination per se, and only some types of discrimination -- for example, on the basis of race -- are banned.

FFF:JGR:aw 6/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1 /

Name of Correspondent: _____

☐ MI Mail Report

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

Subject: "Fair Housing Amendments of 1983" for
Transmittal to Congress

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>CW4011</u>	ORIGINATOR	<u>83106113</u>			<u> 1 / 1 / </u>
	Referral Note:				
<u>CWAT18</u>	<u>D</u>	<u>83106113</u>		<u>S</u>	<u>83106115</u>
	Referral Note:			<u>COB</u>	
		<u> 1 / 1 / </u>			<u> 1 / 1 / </u>
	Referral Note:				
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	Referral Note:				
		<u> 1 / 1 / </u>			<u> 1 / 1 / </u>
	Referral Note:				

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
B - Non-Special Referral
C - Completed
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

COB WEDNESDAY
June 15, 1983DATE: June 10, 1983 ACTION/CONCURRENCE/COMMENT DUE BY: _____SUBJECT: "Fair Housing Amendments of 1983" for Transmittal to Congress
by the President

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	HARPER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McMANUS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please forward comments on the bill, the section-by-section summary and the transmittal message to my office by close of business Wednesday, June 15.

Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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

I am forwarding the "Fair Housing Amendments of 1983" for transmittal to Congress by the President.

The bill, section-by-section summary, and message were drafted and reviewed by the Departments of Housing and Urban Development and Justice. In addition, OMB and the Office of Policy Development (Barr) reviewed the package. OPD would like to be consulted on the timing of Presidential transmittal.

Enclosed is an original and 15 copies of the bill and accompanying material.

TO THE CONGRESS OF THE UNITED STATES:

I am transmitting herewith the "Fair Housing Amendments Act of 1983."

The Federal Fair Housing Act was enacted by the Congress 15 years ago. It stands as a bold promise that no person in the United States should be denied full freedom of choice in the selection of housing because of race, color, religion, sex, or national origin. Since its passage, however, a consensus has developed that the Fair Housing Act has delivered short of its promise because of a gap in its enforcement mechanism.

The principal means of redressing violations under the Act is resolution of complaints by the Secretary of Housing and Urban Development through informal methods of conference, conciliation, or persuasion. This informal process is the best and most effective procedure that can be devised for speedy and non-burdensome relief for individual victims of discrimination. It has worked well when it has been approached in good faith by all parties to the dispute. The Secretary achieves conciliation in roughly three-fourths of the cases in which a determination to resolve through conciliation is made, and the success rate of conciliation by State and local agencies to which complaints are referred is comparable. But as few as the cases may be where conciliation is unsuccessful, they are too many.

The gap in enforcement is the lack of a forceful back-up mechanism which provides an incentive to bring the parties to the

conciliation table with serious intent to resolve the dispute then and there. When conciliation fails, the Secretary has no place else to go. In those few cases where good will is absent, the exclusive reliance upon voluntary resolution is, in the words of former Secretary Carla Hills, an "invitation to intransigence."

I referred to this widely acknowledged gap in the law in my recent State of the Union message, when I said:

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

The central objective of the proposed legislation which I am transmitting today is to supply the missing ingredient to effective enforcement. I propose that when conciliation fails, the Secretary may refer the complaint to the Attorney General with the recommendation that an action be commenced on behalf of the United States in Federal District Court. This expands the current jurisdiction of the Justice Department, now limited to cases of discriminatory patterns or practices, to include cases involving individual victims of discrimination. It thus places the leadership in enforcement where it belongs, with the Federal Government rather than with the individual victim. And in order to emphasize the clear public interest in the prevention of

discriminatory housing practices as well as to add teeth to the enforcement arsenal, it authorizes the Attorney General to seek substantial civil penalties in addition to equitable relief. While the maximum penalties are severe - as they ought to be in cases of violation of the fundamental right to be free from discrimination - the tribunal with power to impose these remedies is that one which has earned and enjoyed the confidence of the American people over our history for its impartiality, independence, and fairness.

I also propose several other important improvements to the enforcement process, including:

- Authorization for the Attorney General to seek specific performance of a conciliation agreement.
- Confirmation that a conciliation may contain an agreement to submit to binding arbitration.
- Authorization of temporary equitable relief through the courts while conciliation attempts are proceeding.
- Conforming the attorneys' fee award provisions to those of the Civil Rights Attorneys Fee Award Act.
- Extension of the statute of limitations for private actions from 180 days to two years.
- Removal of the ceiling on punitive damages obtainable in private enforcement actions.

The proposed legislation also will extend coverage of the Fair Housing Act to prohibit discrimination on the basis of handicap. The need to extend the protection of this statute to the handicapped is a subject on which a clear consensus of the

Congress emerged during the unsuccessful attempt to adopt amendments in the 96th Congress.

Reform of the Fair Housing Act is a necessity that is acknowledged by all. I urge that the Congress give these legislative proposals its immediate attention so that early enactment may be achieved.

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 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.

"(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 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 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, 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."

(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 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 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."

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 States district court.

"(b) 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. 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 modifications of policies, practices, rules, services or facilities connected with a sale or rental, when modification is 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.

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 practices of providing for specific relief, including monetary relief, in conciliation agreements.

In addition to technical amendments eliminating some of the specific time requirements for HUD action in complaint processing, Section 6 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 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 current practice 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. 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.

The amendment also preserves the right of the Secretary under current law to recall a complaint referred to a State or local agency if 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.

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.