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PROPOSED AMENDMENT NO. 2, FOR CONSIDERATION

This amendment would reinstate the one-House veto made part of H.R. 5200 by a division vote of 15-3 in full Committee. Its original sponsor was Mr. Kindness and it was excluded from the prepared draft because of the Executive Branch's consistent opposition to such amendments.

In short, this proposed congressional veto would apply with respect to any proposed or existing rule promulgated by any agency under the authority of title VIII. Once submitted to the House and Senate, such rule would not become effective if (1) both Houses, within 90 days of promulgation, adopt a concurrent resolution of disapproval set forth in the text of the amendment, or (2) one House adopts a resolution within 60 days, and the other House does not disapprove that resolution within 30 days. For detailed explanation of the procedures outlined in the amendment, see Report of the Committee on the Judiciary, House of Representatives, No. 96-865, April 1, 1980, at 16-17.

Text of The Amendment

On page 7, line 18, after "SEC. 7.", insert "(a)".

On page 7, after line 22, add a new subsection (b) as follows:

"(f) (1) Resolution of disapproval

11 “(a)(1) Simultaneously with promulgation or repromul-
12 gation of any rule, issued for the purpose of compliance with this Act, the agency
13 shall transmit a copy thereof to the Committees on the Judiciary
14 of the House of Representatives and the Senate. Except as
15 provided in paragraph (2), rules other than emergency rules
16 shall not become effective, if—

17 “(A) within 90 calendar days of continuous ses-
18 sion of Congress after the date of promulgation, both
19 Houses of Congress adopt a concurrent resolution, the
20 matter after the resolving clause of which is as follows:

21 “That Congress disapproves the rule promulgated by
22 dealing with the matter of
23 which rule was transmitted to Congress on
24 ; the first blank being filled with the
25 name of the agency issuing the rule, the second blank

1 being filled with the title of the rule and such further
2 description as may be necessary to identify it, and the
3 third being filled with the date of transmittal of the
4 rule to Congress; or

5 "(B) within 60 calendar days of continuous ses-
6 sion of Congress after the date of promulgation, one
7 House of Congress adopts such a concurrent resolution
8 and transmits such resolution to the other House, and
9 such resolution is not disapproved by such other House
10 within 30 calendar days of continuous session of Con-
11 gress after such transmittal.

12 "(2) If at the end of 60 calendar days of continuous
13 session of Congress after the date of promulgation of a rule,
14 other than an emergency rule, no committee of either House
15 of Congress has reported or been discharged from further
16 consideration of a concurrent resolution disapproving the
17 rule, and neither House has adopted such a resolution, the
18 rule may go into effect immediately. If, within such 60 calen-
19 dar days, such a committee has reported or been discharged
20 from further consideration of such a resolution, or either
21 House has adopted such a resolution, the rule may go into
22 effect not sooner than 90 calendar days of continuous session
23 of Congress after its promulgation unless disapproved as pro-
24 vided in paragraph (1).

1 “(b)(1) An agency may not promulgate a new rule or an
2 emergency rule identical to one disapproved pursuant to this
3 section unless a statute is adopted affecting the agency’s
4 powers with respect to the subject matter of the rule.

5 “(2) If an agency proposes a new rule dealing with the
6 same subject matter as a disapproved rule, the agency shall
7 comply with the procedures required for the issuance of a
8 new rule, except that if less than 12 months have passed
9 since the date of such disapproval, such procedures may be
10 limited to changes in the rule.

11 “(2) Resolution for reconsideration

12 “(a) Either House of Congress may adopt a resolution
13 directing agency reconsideration of a rule other than an
14 emergency rule. The matter after the resolving clause of such
15 a resolution shall be as follows: “That the
16 directs to reconsider its rule dealing with the
17 matter of which rule is found at
18 .’ (or if a new rule ‘was transmitted to Con-
19 gress on .’), the first blank being filled with
20 the House of Congress adopting the resolution, the second
21 blank being filled with the name of the agency issuing the
22 rule, the third blank being filled with the title of the rule and
23 such further description as may be necessary to identify it,
24 and the fourth blank being filled with the citation to the rule

1 in the agency records or, if it is a new rule, the date on which
2 it was transmitted to Congress.

3 “(b)(1) If a resolution for reconsideration of a rule, other
4 than an emergency rule, is adopted by either House within
5 90 calendar days of continuous session of Congress after the
6 date the rule was promulgated, the rule shall not go into
7 effect. The agency shall reconsider the rule and within 60
8 days either withdraw or repromulgate the rule with such
9 changes and with such public participation as the agency de-
10 termines appropriate. If the agency takes no action within 60
11 days such rules shall lapse. If promulgated, the rule shall be
12 subject to congressional review and go into effect as provided
13 in this chapter.

14 “(2) If at the end of 60 calendar days of continuous
15 session of Congress after the date of promulgation of a rule,
16 other than an emergency rule, no committee of either House
17 of Congress has reported or been discharged from further
18 consideration of a resolution of reconsideration of a rule, the
19 rule may go into effect at the end of such period. If, within
20 such 60 calendar days, such a committee has reported or
21 been discharged from further consideration of such a resolu-
22 tion, the rule may go into effect not sooner than 90 calendar
23 days of continuous session of Congress after its promulgation.

24 “(c) One hundred eighty days after passage of a resolu-
25 tion for reconsideration with respect to a rule which has

1 taken effect, the rule shall lapse unless repromulgated by the
2 agency. Unless excepted by subsection 553(a) of Title 5, U.S. Code,
3 the agency shall, not less than 60 days prior to repromulgat-
4 ing such a rule, give notice of a proceeding to consider its
5 repromulgation. The notice and proceeding shall comply with
6 subsections (b) and (c) of section 553 of Title 5, U.S.C. except that
7 the provisions of paragraph 553(b)(3) shall not be available to
8 the agency and the agency shall hold a hearing for oral pres-
9 entations. Rules repromulgated pursuant to this subsection
10 within 180 days of the passage of the resolution for reconsid-
11 eration shall take effect as provided in subsection (1)(a); and
12 during the period for congressional review provided in that
13 section the reconsidered rule may remain in effect.

14 (d) A concurrent resolution of disapproval supersedes a
15 resolution for reconsideration of the same rule or part
16 thereof.

17 (3) Effect on statutory time limits

18 "If a resolution of Congress disapproves or directs re-
19 consideration of a rule which was being promulgated subject
20 to a statutory time limit for rule making, the adoption of the
21 resolution shall not relieve the agency of its responsibility for
22 adopting a rule, but any statutory time limit shall apply to
23 such renewed rule making only from the date on which the
24 resolution was adopted.

1 (4) Computation of calendar days of continuous ses-
2 sion of Congress

3 "For the purposes of this chapter—

4 "(1) continuity of session is broken only by an ad-
5 journment sine die; and

6 "(2) the days on which either House is not in ses-
7 sion because of an adjournment of more than 3 days to
8 a day certain are excluded in the computation of calen-
9 dar days of continuous session.

10 (5) Procedure for consideration of resolutions

11 "(a) The provisions of this section are enacted by
12 Congress—

13 "(1) as an exercise of the rule making power of
14 the Senate and the House of Representatives, respec-
15 tively, and as such they are deemed a part of the rules
16 of each House, respectively, but applicable only with
17 respect to the procedure to be followed in that House

18 in the case of resolutions described by subsections (1)
19 and (2); and they supersede other rules only to

20 the extent that they are inconsistent therewith; and

21 "(2) with full recognition of the constitutional
22 right of either House to change the rules (so far as re-
23 lating to the procedure of that House) at any time, in
24 the same manner and to the same extent as in the case
25 of any other rule of that House.

1 “(b)(1) Resolutions of disapproval and resolutions for re-
2 consideration of a rule shall, upon introduction or receipt
3 from the other House of Congress be immediately referred by
4 the presiding officer of the Senate or of the House of Repre-
5 sentatives to the standing committee having oversight and
6 legislative responsibility with respect to the promulgating
7 agency in accordance with the rules of the respective House;
8 and such resolutions shall not be referred to any other
9 committee.

10 “(2) If a committee to which is referred a resolution
11 which has not been adopted by the other House of Congress,
12 does not report out such resolution—

13 “(A) within 45 calendar days of continuous ses-
14 sion of Congress after referral, in the case of a resolu-
15 tion to disapprove or to require reconsideration of a
16 rule pursuant to subsections (1)(a) or (2)(b); or

17 “(B) within 90 calendar days of continuous ses-
18 sion of Congress after referral, in the case of a resolu-
19 tion to require reconsideration of a rule pursuant to
20 subsection (2)(c);

21 it shall be in order to move to discharge such committee from
22 further consideration of such resolution.

23 “(3) If a committee to which is referred a resolution
24 which has been adopted by the other House of Congress does
25 not report out such resolution within 15 calendar days of

1 continuous session of Congress after referral, in the case of a
2 resolution to disapprove a rule pursuant to subsection (1)(a), it
3 shall be in order to move to discharge such committee from
4 further consideration of such resolution.

5 “(4) Such motion to discharge must be supported by
6 one-fifth of the Members of the House of Congress involved,
7 and is highly privileged in the House and privileged in the
8 Senate (except that it may not be made after the committee
9 has reported a resolution of disapproval or for reconsideration
10 with respect to the same rule); and debate thereon shall be
11 limited to not more than 1 hour, the time to be divided in the
12 House equally between those favoring and those opposing the
13 motion to discharge and to be divided in the Senate equally
14 between, and controlled by, the majority leader and the mi-
15 nority leader or their designees. An amendment to the motion
16 is not in order, and it is not in order to move to reconsider
17 the vote by which the motion is agreed to or disagreed to.

18 “(c)(1) Except as provided in paragraphs (2) and (3) of
19 this subsection, consideration of a resolution of disapproval or
20 for reconsideration shall be in accord with the rules of the
21 Senate and of the House of Representatives, respectively.

22 “(2) When a committee has reported or has been dis-
23 charged from further consideration of a resolution with re-
24 spect to a rule, it shall be in order at any time thereafter
25 (even though a previous motion to the same effect has been

1 disagreed to) to move to proceed to the consideration of the
2 resolution. The motion is highly privileged and is not debat-
3 able. An amendment to the motion is not in order, and it is
4 not in order to move to reconsider the vote by which the
5 motion is agreed to or disagreed to.

6 "(3) Debate on the resolution shall be limited to not
7 more than 2 hours, which shall be divided equally between
8 those favoring and those opposing the resolution. A motion
9 further to limit debate is not debatable. An amendment to or
10 motion to recommit, the resolution is not in order and it is
11 not in order to move to reconsider the vote by which the
12 resolution is agreed or disagreed to.

13 (4) Effect on judicial review

14 "Congressional inaction on or rejection of a resolution of
15 disapproval or of a resolution for reconsideration shall not be
16 deemed an expression of approval of such rule.

PROPOSED AMENDMENT NO. 3, FOR CONSIDERATION

This amendment would reinstate the administrative procedure passed by the House on June 12, 1980, with certain changes as mandated through Republican amendments prepared for full committee consideration but never offered.

The principal feature of the "compromise", from the Republican perspective, is the presence of a de novo determination subsequent to the decision of the administrative law judge. This review is not a de novo review, which requires that the entire proceeding be repeated before a federal judge. The amendment does allow, however, for a de novo determination of the adequacy of the findings of fact and conclusions of law to which objection is made. Moreover, the reviewing judge is empowered to "receive further evidence" if he so desires, and "accept, reject, or modify" the administrative decision.

The Supreme Court, in a decision issued a little over a month after the House adopted H.R. 5200, addressed the definition of de novo determination. In its opinion in United States v. Raddatz, supra, the Supreme Court, in a 6-3 decision, held the process constitutional and concluded that a reviewing judge could award "whatever reliance. . . [he] chose to place on the [administrative law judge's] proposed findings and recommendations."

There are several differences between the Magistrates Act, on which the de novo determination in H.R. 5200 was based, and the language reviewed in Raddatz. If a decision is made to go forward with this enforcement mechanism, you may wish to amend the draft

amendment further. For example, the Synar amendment limited de novo determination to findings of fact and conclusions of law; the Magistrates Act gave the freedom to review "those portions of the report or specified proposed findings or recommendations to which objection is made." In addition, the Synar amendment limits the remand power of the federal court to cases where evidence was "improperly excluded" by the administrative law judge or where the court found a "compelling need" for additional evidence. You may wish to delete the word "compelling".

As indicated above, I have incorporated several amendments originally drafted for Mr. Butler. They are as follows:

(1) Proposed Amendment No. 3(a), for Consideration:

This amendment limits the Secretary's power to "certify" the suitability of State housing agencies.

(2) Proposed Amendment No. 3(b), for Consideration:

This amendment eliminates the procedures through which the Secretary of HUD could request that the Attorney General petition for "temporary or preliminary relief pending final disposition" of the complaint. Mr. Butler was concerned that such orders could hold up construction projects, costing developers substantial sums of money.

(3) Proposed Amendment No. 3(c) for Consideration:

This amendment guarantees that the accused party in an administrative proceeding receive full disclosure of the charges and evidence against him.

(4) Proposed Amendment No. 3(d) for Consideration:

This amendment erases the possibility of administrative and civil proceedings going forward simultaneously.

(5) Proposed Amendment No. 3(e), for Consideration:

This amendment eliminates the power of the Attorney General to intervene in a private suit brought by an "aggrieved party".

(6) Proposed Amendment No. 3(f), for Consideration:

This amendment strikes language in the Synar amendment which would give the federal judge the power to appoint a free attorney for the complainant in a civil action.

(7) Proposed Amendment No. 3(g), for Consideration:

This amendment sets local standards for award of attorneys' fees under Title VIII.

Text of The Amendment

On page 8, strike lines 2 and 3, and insert in lieu thereof the following: "amended --

(1) by striking out the second sentence and inserting in lieu thereof the following: "The Secretary shall delegate such function with respect to hearing, determininng, and ordering under section 811 of this title to administrative law judges appointed by the Attorney General and serving in the Department of Justice in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code.";

(2) by inserting "and hearings" after "possible conciliation meetings";

(3) by striking out the last sentence and inserting in lieu thereof the following: "An administrative law judge conducting a hearing under section 811 of this title may not consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the Department of Housing and Urban Development in a case may not, in that or a factually related case, participate or advise in any decision made in such hearing except as witness or counsel in public proceedings. A person may become an administrative law judge for hearings under section 811 of this title only by appointment from the administrative law judge register established by the Office of Personnel Management as the result of competitive examination. A person may not function as an administrative law judge in such a hearing if such person has, within the two-year period immediately before the commencement of such

hearing, been an employee or agent engaged in the performance of investigative or prosecuting functions for the Department of Housing and Urban Development. An administrative law judge position may be filled by appointment from that register or by reinstatement, reassignment, transfer, or promotion of a person who has formerly received an appointment from that register. Such an administrative law judge is removable by the Attorney General only for good cause established and determined by the Merit Systems Protection Board after opportunity for hearing and upon the record thereof.", and strike out "SEC. 810. (a)" on line 5 and all that follows through line 6 on page 17, and insert in lieu thereof the following:

"SEC. 810. (a)(1) Whenever an aggrieved person, or the Secretary on the Secretary's own initiative, files a charge alleging a discriminatory housing practice, the Secretary shall serve a notice of the alleged discriminatory housing practice on the party charged (hereinafter in this title referred to as the 'respondent') within 10 days after such filing, and shall make an investigation thereof. Upon receipt of such charge, the Secretary shall serve notice upon the aggrieved person acknowledging receipt of the charge and advising the aggrieved person of the time limits and choice of forums provided under this title. Such charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Secretary requires. At any time after the filing of a charge, the Secretary shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal

methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year. An aggrieved person shall file a charge under this section with the Secretary not later than one year after the alleged discriminatory housing practice occurred or terminated. The Secretary may also investigate housing practices to determine whether charges should be brought under this section or new rules should be made under this title.

"(2) (A) In connection with any investigation of such charge, the Secretary shall, at reasonable times, have access to, and the right to copy, any information that is reasonably necessary for the furtherance of the investigation. The Secretary may issue subpoenas to compel such access to or the production of such information, or the appearance of persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

"(B) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and sub-

ject to the same limitations as subpoenas issued by the Secretary under clause (A) of this paragraph.

"(C) Witnesses summoned by subpoena of the Secretary under this title shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts.

"(D) The Secretary or other party at whose request a subpoena is issued under this title may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

"(E) Any person who willfully fails to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in such person's power to do so, in obedience to the subpoena or lawful order of the Secretary under this title, shall be fined not more than \$1,000. Any person who, with intent thereby to mislead the Secretary shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to the Secretary's subpoena or other order, or shall willfully fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000.

"(3) Whenever a charge alleges a discriminatory housing practice within the jurisdiction of a State or local public agency ~~certified-by-the-Secretary~~ under this paragraph, the Secretary shall, within 30 days after receiving such charge and before taking any

action with respect to such charge, refer such charge to that certified agency. Except with the consent of such certified agency, the Secretary shall, after that referral is made, take no further action with respect to such charge, if the appropriate State, or local law enforcement official has, before ninety days after the date the alleged offense has been brought to such official's attention, condemned proceedings in the matter, and, having so commenced proceedings, carries forward such proceedings with reasonable promptness. ~~An agency shall be certified under this paragraph if the Secretary determines that the substantive rights protected by that agency, the procedures followed by that agency, the remedies available to such agency, and the availability of judicial review of such agency's action, are substantially equivalent to those created by and under this title.--Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.--Any State or local agency may submit a written request for certification to the Secretary.--Unless the Secretary interposes a written objection within 90 days after such submission, such State or local agency shall be deemed certified within the meaning of this title. If the Secretary objects within the prescribed 90-day period, he shall provide the State or local agency with an explanation specifically outlining the reason for his decision, and such decision shall be subject to review by the appropriate United States district court.~~ See discussion on Proposed Amendment #3(a).

"(4) The Secretary and other Federal agencies having authority to prevent housing discrimination shall cooperate and seek to avoid duplication of effort in the exercise of their several

authority. The Secretary and such other Federal agencies shall notify each other of any allegation of housing discrimination which may be within their respective responsibilities. The Secretary or such other Federal agency shall, upon such notification, take additional appropriate action.

~~"(b)--If-the-Secretary-concludes-on-the-basis-of-a-preliminary-investigation-of-a-charge-that-the-Secretary-is-unable-to obtain-voluntary-compliance-and-prompt-judicial-action-is-necessary to-carry-out-the-purposes-of-this-title,-an-action-may-be-brought on-behalf-of-the-Secretary-for-appropriate-temporary-or-preliminary relief-pending-final-disposition-of-such-charge.--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.--An-application-for-relief-under-this paragraph-shall-not-affect-the-initiation-or-continuation-of-administrative-proceedings-under-sections-810-and-811-of-this-title.~~
See discussion on Proposed Amendment #3(b).

"(b) If the Secretary determines, after an investigation under this section, that reasonable cause exists to believe the charge is true, the Secretary shall file an administrative complaint under section 811(a) of this title or refer the matter to the Attorney General for the filing of an appropriate civil action under section 813(b) of this title. The Secretary shall so refer any such matter in which land use controls are claimed to be in violation of this title. Such determination in the case of a charge made by an aggrieved person may not be made later than 270

days after the filing of such charge. After each investigation under this section, the Secretary shall provide to each aggrieved person and each respondent a copy of the findings of such investigation. The respondent shall have access to and the right to copy any information collected in furtherance of such investigation and report. See discussion on Proposed Amendment #3(c).

"ENFORCEMENT BY THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT; HEARING PROCESS

"SEC. 811. (a) Upon filing an administrative complaint, the Secretary shall cause a copy of such complaint to be served on the respondent, together with a notice of opportunity for a hearing on the record at a place and time (not less than thirty days after the service of such complaint) specified in such notice. On the request of the respondent and with the consent of all other parties, a hearing may be rescheduled for a time earlier than the time specified in such notice. Any resolution of a charge or complaint by means of conciliation shall require the consent of the person who filed the charge, and any such resolution following the service of a complaint under this subsection shall also require the approval of the Secretary. No hearing may commence under this section until the Secretary certifies that conciliation has been attempted with respect to the charge or complaint on which such hearing is to be held. The respondent shall have the right to file an answer to the administrative complaint and to appear in person or otherwise and give testimony at a hearing on the record. Any aggrieved person may be allowed to intervene on the proceeding, to appear in person or otherwise, to obtain the issuance of a reasonable number of subpoenas in the manner set forth in section 810 of this title, and to present testimony. After the conclusion of such hearing, the

administrative law judge conducting the hearing shall make findings of fact and conclusions of law, and may issue an order providing such relief as may be appropriate, and may impose a civil penalty of not to exceed \$10,000. The administrative law judge shall not announce or otherwise make available such findings of fact, conclusions of law, or such order before 5 days after the conclusion of such hearing, and the parties may resolve the charge by conciliation during that period. No such order shall affect any contract of sale, encumbrance, or lease executed before the issuance of such order, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this title. The Secretary is not authorized to modify any order under this section, or the decision of the administrative law judge.

"(b) The findings of fact and conclusions of law made with respect to a final order issued under subsection (a), together with a copy of such order, shall be served on each aggrieved person and each respondent in the proceeding.

"(c) Any petition for judicial review of a final order under subsection (a) shall be filed in the Federal district court for the district in which the property is located not later than 30 days after service of such order. The petition may be amended after a reasonable opportunity to review the record of the administrative proceeding. For the purposes of judicial review of such an order, any aggrieved person shall be deemed a party in the administrative proceeding reviewed. The petition shall contain written objections to such order and shall specify those portions of the record of findings of fact and conclusions of law to which objection is made.

The court shall make a de novo determination of the adequacy of the findings of fact and conclusions of law to which objection is made. The court may receive further evidence, or recommit the matter to the administrative law judge with instructions, if such evidence was improperly excluded by the administrative law judge or if the court determines that there is a compelling need for further evidence to support a factual determination. To the extent that further evidence is received by the court, such evidence shall be deemed a part of the record and shall be considered in the determination of whether to accept, reject, or modify the findings of fact and conclusions of law of the administrative law judge. Based on a review of the record as a whole, the court may accept, reject, or modify, in whole or in part, the findings of fact and conclusions of law made by the administrative law judge. All proceedings under this subsection in the Federal district court shall be given precedence over other civil proceedings pending therein and shall be in every way expedited.

"(d)(1) Any person who violates a final order under subsection (a) shall be subject to a civil penalty assessed by the administrative law judge holding the hearing of not more than \$1,000 for each day during which such violation continues after the date on which such final order becomes unreviewable.

"(2) For the purposes of paragraph (1) of this subsection, a final order becomes unreviewable --

"(A) if a petition for review has not been filed in the appropriate Federal district court on the day 30 days after the service of such final order, or

"(B) if such a petition is so filed within such 30-day limit,

on the date on which the last appellate court's decision becomes final and not subject to any further appellate proceeding.

"(e) The United States district courts shall have original jurisdiction over petitions for judicial review of final orders under subsection (a) of this section without regard for the amount in controversy.

"PRIVATE ENFORCEMENT

"SEC. 812. (a)(1) An aggrieved person may commence a civil action in an appropriate United States district court or State court at any time not later than two years after the alleged discriminatory housing practice occurred or terminated.

"(2) After an aggrieved person has commenced a civil action under this section, the Secretary may not commence or continue proceedings toward the issuance of a remedial order based on such charge.

"(3) An aggrieved person shall not commence a civil action under this subsection with respect to a charge made by that person to the Secretary. ~~if-the-Department-of-Housing-and-Urban-Development-(or-a-State-or-local-agency-to-which-the-Secretary-refers such-charge)-has-commenced-the-hearing-on-the-record-with-respect to-that-charge.~~ See discussion on Proposed Amendment #3(d).

~~"(4)--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.~~ See discussion on Proposed Amendment #3(e).

~~"(b)--Upon-application-by-an-aggrieved-person, any-trial or-appellate-court-may, in-such-circumstances-as-it-deems-just,-~~

~~appoint-an-attorney-for-such-person-and-may-authorize-the
commencement-or-continuation-of-the-action-without-the-payment
of-fees,-costs,-or-security.~~ See discussion on Proposed
Amendment #3(f).

"(b) In a civil action under this section, a court may award such relief as may be appropriate, which may include money damages, equitable and declaratory relief, and, in the case of a willful violation, punitive damages.

"ENFORCEMENT ROLE OF ATTORNEY GENERAL

"SEC. 813. (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 Attorney General may bring a civil action in an appropriate United States district court (1) to enforce any final order under section 811(a) of this title that is referred for enforcement by the Secretary; (2) to collect any civil penalty assessed under section 811 of this title; and (3) to remedy any discriminatory housing practice (A) with respect to which the Secretary has made a finding that reasonable cause exists under this title and (B) which the Secretary refers to the Attorney General for enforcement under this subsection.

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"(c) The court may award such relief in any civil action under this section as is authorized in section 812(c) of this title in cases brought under that section.

"(d) A person may intervene in any civil action commenced under this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person.

"ANCILLARY AND PROCEDURAL MATTERS RELATING TO ENFORCEMENT

"SEC. 814. (a) In any action or proceeding under this title, the court, in its discretion, may allow a prevailing party (other than the United States with respect to attorney fees) reasonable attorney and expert witness fees as part of the costs, and the United States shall be liable for such costs the same as a private person. Such costs may also be awarded upon the entry of any interlocutory order which determines substantial rights of the parties. For purposes of this section, a reasonable attorneys fee is a fee (i) which is based upon the actual time expended by an attorney in providing advice and other legal services, and (ii) which is computed at the prevailing rate with respect to actions brought in the court which is awarding such fee. See discussion on Proposed Amendment #3(g).

"(b) In any administrative proceeding based on a charge under section 810(a) of this title, any prevailing party (other than the United States with respect to attorney fees) may be awarded reasonable attorney and expert witness fees as a part of a final order under section 811(a) of this title.

"(c) Any court in which a proceeding is instituted under this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

"(d) Any sale, encumbrance, or lease executed before the issuance of any court order under this title, and involving a bona fide purchaser, or encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under this title shall not be affected by such court order."

PROPOSED AMENDMENT #4 FOR CONSIDERATION

This amendment is designed to alter the definition of "handicapped" by limiting handicapped persons excluded from coverage under the bill to those who have an alcoholism or drug abuse impairment. The 1980 law would have also covered those who have "any other impairment" which would present a "direct threat" to the "property or safety of others."

Text of the Amendment

On page 3, line 7 strike "any other impairment that" and insert in lieu thereof "which".

I understand would have to prove that the person is both addicted and dangerous.

PROPOSED AMENDMENT #5 FOR CONSIDERATION

This amendment substitutes existing statutory law, as contained in Section 504 of the Rehabilitation Act, as well as certain Labor Department regulations, in place of language used in the original draft relative to the definition of handicapped discrimination.

Text of the Amendment

On page 6, line 3, strike "result in", inserting in lieu thereof "impose an undue hardship on".

On page 6, line 4, strike "unreasonable inconvenience to".

parallel to 304 regs + case law

PROPOSED AMENDMENT #6 FOR CONSIDERATION

This is a block amendment designed to incorporate mandatory time tables in the judicial enforcement mechanism in the draft bill. The specific day limitations are flexible, but the purpose is to eliminate the argument that judicial enforcement is slow and cumbersome. The presence of mandatory time tables for administrative and judicial action will guarantee speedy consideration of meritorious claims.

Text of the Amendment

On page 12, line 7, strike the word "may" and insert in lieu thereof "shall".

On page 12, line 8, strike "may" and insert in lieu thereof "shall".

On page 12, line 8, after the word "action", insert "within ten days".

On page 13, line 15, strike "for the filing of" and insert in lieu thereof "who shall file".

On page 13, line 15, after the word "action", insert in lieu thereof "within 30 days".

On page 13, line 18, strike "two" and "seventy" and insert in lieu thereof "one" and "eighty", respectively.

On page 15, line 10, strike the word "may" and insert in lieu thereof "shall".