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**OFFICE OF POLICY DEVELOPMENT**

**STAFFING MEMORANDUM**

DATE: 7/11/83 ACTION/CONCURRENCE/COMMENT DUE BY: asap

SUBJECT: "FAIR HOUSING AMENDMENTS OF 1983" FOR TRANSMITTAL TO CONGRESS

BY THE PRESIDENT

	ACTION	FYI		ACTION	FYI
HARPER	<input type="checkbox"/>	<input type="checkbox"/>	DRUG POLICY	<input type="checkbox"/>	<input type="checkbox"/>
PORTER	<input type="checkbox"/>	<input type="checkbox"/>	TURNER	<input type="checkbox"/>	<input type="checkbox"/>
BARR	<input type="checkbox"/>	<input type="checkbox"/>	D. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>
BLED SOE	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF POLICY INFORMATION		
BOGGS	<input type="checkbox"/>	<input type="checkbox"/>	HOPKINS	<input type="checkbox"/>	<input type="checkbox"/>
BRADLEY	<input type="checkbox"/>	<input type="checkbox"/>	PROPERTY REVIEW BOARD	<input type="checkbox"/>	<input type="checkbox"/>
CARLESON	<input type="checkbox"/>	<input type="checkbox"/>	OTHER		
DENEND	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GALEBACH	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GARFINKEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GUNN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
B. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LI	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McALLISTER	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MONTOYA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ROPER	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
SMITH	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
SWEET	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
UHLMANN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ADMINISTRATION	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

## WHITE HOUSE STAFFING MEMORANDUM

DATE: July 11, 1983 ACTION/CONCURRENCE/COMMENT DUE BY: ASAP

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"/> 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 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 and section-by-section analysis as soon as possible. The transmittal message was staffed to you on June 10 and has not been changed.

Thank you.

**RESPONSE:**

Richard G. Darman.  
Assistant to the President



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 11 1983

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

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

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

The changes:

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

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

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

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

A BILL

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

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

SHORT TITLE

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

SHORT TITLE FOR 1968 ACT

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

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

### SHORT TITLE

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

### DEFINITIONS

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

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

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

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

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

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

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

#### DISCRIMINATION AGAINST THE HANDICAPPED

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

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

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

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

"(A) discrimination includes --

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

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

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

"(B) discrimination does not include --

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

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

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

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

#### ENFORCEMENT BY THE GOVERNMENT

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ENFORCEMENT BY PRIVATE PERSONS

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

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

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

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

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

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

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

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

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

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

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

#### ENFORCEMENT BY THE ATTORNEY GENERAL

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

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

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

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

#### TECHNICAL AND CONFORMING AMENDMENTS

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

#### CONFORMING AMENDMENT TO TITLE IX OF 1968 CIVIL RIGHTS ACT

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

#### APPLICABILITY

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

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

Popular Names

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

Definitions

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

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

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

#### Discrimination Against The Handicapped

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

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

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

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

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

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

#### Enforcement by the Government

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Enforcement by Private Persons

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

Section 812(a) is amended to:

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

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

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

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

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

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

#### Special Jurisdiction of the Attorney General

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

#### Technical and Conforming Amendments

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

### Applicability

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