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WASHINGTON, D.C. 20548

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AUG 16 1977

The Honorable Don Edwards
Chairman, Subcommittee on Civil and
Constitutional Rights
House of Representatives

Dear Mr. Chairman:

Your letter of April 12, 1977, requested our comments on title II of H.R. 3504, 95th Congress. If enacted, title II would be cited as the "Fair Housing Amendments Act of 1977."

Section 206(c) would add section 804(f) to the Civil Rights Act of 1968 (Pub. L. 90-284, 82 stat. 73 (April 11, 1968)) to prohibit a person in the business of insuring against hazards to refuse to enter into a contract of insurance for a dwelling because of the race, color, or national origin of persons residing in or near the dwelling. Section 206(e) would amend section 805 of that act (42 U.S.C. sec. 3605 (1970)) to prohibit discrimination by banks, building and loan associations, insurance companies, or other corporations, associations, firms, or enterprises in the business of making commercial real estate loans to deny loans or financial assistance because of the neighborhood of the dwelling or dwellings. Both of these sections appear to prohibit what has been commonly referred to as redlining. We believe that these sections would be more easily understood if the term "redlining" were used and the term was defined as the denial of insurance, loans, and other financial assistance solely on the basis of the racial composition of the neighborhood in which the dwellings are located.

Section 206(d) would amend sections 804, 805, and 806 of the act (42 U.S.C. sec. 3604-06 (1970)) by adding handicaps as a prohibitive basis for discrimination. To be consistent with the Equal Credit Opportunity Act of 1974, as amended (15 U.S.C sec. 1691 et. seq. (Supp. V, 1975)), this section should be expanded to include marital status, age, and source of applicant's income.

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Section 208 proposes to strike sections 810 through 814 of the 1968 act (42 U.S.C. sec. 3610-14 (1970)) and to insert in lieu thereof a new section 810. This section would give to the Secretary of the Department of Housing and Urban Development (HUD) the authority to conduct hearings and to issue orders requiring violators to cease and desist from unlawful practices. As you know, our Office has reviewed HUD's efforts to resolve title VIII complaints and has found that its enforcement efforts generally have not been effective because HUD lacked the authority to ensure compliance when discrimination was found. We, therefore, believe that administrative enforcement authority is needed and endorse the intent of the new section 810.

Section 210(a) would amend the act by adding a new section 818 to establish in the Treasury a Fair Housing Loan Fund which would be available to the Secretary of the Department of Housing and Urban Development for purposes of making loans to any aggrieved person alleging a violation of title II for use of such person in paying the costs of a civil action to enforce this title. The Treasury would be required to make loans to the fund not to exceed $1,000,000 outstanding at any one time when determined necessary to carry out the provisions of this section. The sum of $10,000,000 would be authorized to be appropriated for the establishment of the fund.

We believe that the public interest is best served when congressional control over activities is exercised through annual reviews and affirmative action on planned programs and financing requirements through the appropriation processes. Departure from this standard has been supported by GAO only on a clear showing that the activity cannot be successfully operated in the public interest within the regular appropriation process.

We see no necessity for establishing a revolving fund to make and collect the loans authorized by this section, particularly since it is questionable whether the fund will be self-sustaining. The fund would not likely be self-sustaining because, under provisions of section 818(b), the Secretary would be authorized to cancel those loans not covered by amounts allowed plaintiffs in civil actions. We therefore suggest that all references to the loan fund be deleted. If this suggestion is followed, a provision should be added to the bill requiring that loan repayments be deposited as miscellaneous receipts. Without a loan fund the Secretary would be required to justify to the Congress each year the program funds authorized by this section.

If it is determined that the provision for a loan fund is to be retained, we are concerned that the proposed section 818(d) provides that the amounts in the fund not needed for current operations be invested in interest bearing securities issued or guaranteed by the United States. We do not believe the fund should be permitted to earn interest on amounts which Treasury will derive from general revenues or from borrowings. As far as we know, the Government funds which are permitted to to be invested in Government issued or guaranteed securities are those which are derived in whole or in part from special taxes or contributions such as social security, unemployment insurance, retirement funds, etc.

The bill provides for Treasury loans to the loan fund not to exceed $1 million outstanding at any time. The bill's provision for the payment of interest on such loans seems unduly complicated in providing for the payment of interest on average daily balances at rates which may have no relationship to the maturity of the loans. We suggest that this section be deleted and the following substituted.

> "(2) Interest rates on the loans made pursuant to paragraph (1) of this subsection shall be established by the Secretary of the Treasury taking into consideration the market yield on marketable Government securities of comparable maturity. The loans may be repaid fully or partially by the fund prior to maturity without penalty or adjustment of the interest rate."

We also believe that, if the provision for a revolving fund is retained, provisions should be added requiring that (1) loans made from the fund in any fiscal year not exceed limitations specified in appropriation acts, (2) business-type budgets be submitted to the Congress, and (3) all expenses of operating the fund be charged to the fund. Language of the type required is included in the law authorizing the fund for higher education academic facilities loans (20 U.S.C. 1132c-3 and (b)(2)).

The bill provides in the proposed new section 818(b) that the rate of interest on loans to pay the cost of civil actions by persons alleging violations of this title will be determined by the Secretary. However, the bill does not provide any limits or guidelines as to the rates to be charged.

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We recommend that section 818(b) be revised to provide that the rate of interest on the loans be based on a determination by the Secretary of the Treasury of the average yield to maturity as of June 30 of the preceding fiscal year on all outstanding marketable obligations of the United States. The Subcommittee may also wish to stipulate that the interest rate shall include an estimated factor to recover the Government's expenses of administering the loan fund.

Sincerely yours,

Deputy Comptroller General
of the United States