

August 6, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate
Room S-221, The Capitol
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Room S-230, The Capitol
Washington, D.C. 20510

The Honorable Kyrsten Sinema
317 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Rob Portman
448 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Majority Leader Schumer, Minority Leader McConnell, Senator Sinema and Senator Portman:

The undersigned organizations write today to express our opposition to the Grassley/Leahy Amendment (Number 2435) in its current form, and as a proposed addition to H.R. 3684, the legislative vehicle for the bipartisan infrastructure framework. The Amendment would make changes to the False Claims Act (FCA) that could harm the housing market and frustrate efforts to work with the private sector to distribute COVID-related rental and homeowner assistance.

We recognize the importance of the FCA in protecting taxpayers from fraud, waste and abuse at a time when the federal government is seeking to distribute trillions of dollars in much-needed COVID-related economic aid. However, the Amendment would make both substantive *and retroactive* changes to the FCA without benefit of congressional hearings, testimony or more rigorous legal analysis to determine its impact and likely unintended consequences.

In fact, the potential for unintended consequences from the Amendment is not hypothetical. The housing finance industry incurred billions of dollars of false claims liability over the last decade because the Federal Housing Administration (FHA) and Department of Justice over pursued lenders for minor errors on defaulted FHA insured loans that had no causal relationship to the reason for default. That experience forced many lenders to exit the FHA program, while other lenders responded to that risk by imposing sharply higher qualifying requirements on FHA borrowers.

The result was a decade of reduced access and higher costs of FHA financing for first-time, low- to moderate-income, and minority homebuyers that the program is designed to serve. Only recently have changes to the FHA program certifications provided lenders with greater certainty and reduced the risk of draconian penalties they could be exposed to for immaterial data or documentation errors.

However, just as those changes have begun to attract lenders back to the program and reduce the credit tightening that limited access to FHA-insured loans, the proposed Amendment, if enacted, would threaten to reverse that progress. The proposed Amendment's impact could further slow desperately needed aid to COVID-impacted families and introduce new FCA litigation uncertainty into the mortgage market.

To avoid such unintended consequences, we urge more careful consideration of the substantive legal changes contained within Amendment 2435. We strongly urge that Amendment 2435 not be considered as part of the current debate regarding the bipartisan infrastructure package.

Sincerely,

American Bankers Association

Housing Policy Council

Mortgage Bankers Association

cc: The Honorable Sherrod Brown, Chairman, Senate Committee on Banking, Housing and Urban Affairs

The Honorable Pat Toomey, Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs