

Nomination of Senator Jeff Sessions to be Attorney General of the United States
Questions for the Record
Submitted January 17, 2017

QUESTIONS FROM SENATOR FLAKE

1. Historically, the federal False Claims Act has been used to pursue entities that commit serious fraud against the government. However, under President Obama, the Department of Justice for the first time used the Act to bring claims against lenders for technical violations of Federal Housing Administration (FHA) guidelines. In many cases, these actions were based on finding minor documentation or processing errors that did not cause loan defaults or otherwise impact loan quality or performance. Many lenders have been forced to settle these allegations for billions of dollars to mitigate reputational harm and legal costs. As a result of these risks, many lenders have scaled back or left the FHA program altogether, limiting access to credit for working families that rely on FHA for financing their first home.
 - a. Under your leadership, will the Justice Department only pursue False Claims Act cases in which the individual *knowingly* uses a false record or *knowingly* makes a false statement that is material to a false claim?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will faithfully enforce 31 U.S.C. § 3729 and *Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989 (2016), the most recent False Claims Act decision issued by the U.S. Supreme Court implicated by this question.

- b. During your confirmation hearing, Senator Grassley asked that you regularly report to Congress on the status of False Claims Act cases.
 - i. Will you commit to reporting on outstanding False Claims Act cases?

RESPONSE: If I am confirmed, I will make every effort to respond to all Congressional reporting requirements.

- ii. If so, will you identify in these reports to Congress which False Claims Act cases rely on a false-certification theory?

RESPONSE: If Congress so requires, yes.