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White-Collar Overtime Exemption for Mortgage Loan Officers Currently being Hotly Contested

The Federal District Court for the Eastern District of Michigan is set to decide a hot-button wage-and-hour topic next month that could eventually affect all banks and credit unions in both Tennessee and Kentucky. Several years ago, in *Henry v. Quicken Loans, Inc.*, Ryan Henry, a former loan consultant for Quicken, filed a collective action complaint against the company on behalf of himself and all other loan officers working for the company, alleging that Quicken unlawfully withheld overtime pay for all time worked over 40 hours per week.

More specifically, Henry alleged that Quicken's practices violated the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207(a)(1), as the loan officers' primary responsibilities involved the "selling" of mortgage loans. As a result, if the loan officers' primary duties involved "sales," they could not be considered exempt administrative employees, and would thus be entitled to back pay for overtime wages.

In March 2010, the Wage and Hour Division of the United States Department of Labor ("DOL") added additional credence to this collective-action suit when it issued Administrator's Interpretation No. 2010-1 ("AI"), determining that the FLSA's white collar overtime exemption for administrative employees would no longer cover "typical" mortgage loan officers. The AI expressly overturned two prior DOL opinion letters discussing the same issue.

With trial quickly approaching in the *Henry* case, the Mortgage Bankers Association, the American Bankers Association, and several other trade organizations filed an amicus brief requesting that Judge Murphy reject adoption of the AI. If the Eastern District of Michigan adopts the AI, Quicken will be liable for substantial back pay to its mortgage loan officers. On appeal, the case would be heard by the Sixth Circuit Court of Appeals, which governs the law in both Tennessee and Kentucky.

In light of the DOJ's recent change in position, courts are more likely to begin resolving increased litigation on this topic. Credit unions and banks would be wise to consult with counsel to ensure compliance with the new regulations, particularly in light of the potential substantial liability Quicken now faces.

For questions regarding this development or other compliance-related or wage-and-hour related issues, please contact [Karen Smith](#) at (423) 785-8209.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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