

# Quicken Loans Atty Says DOJ Lending Crusade Went Too Far

By **Evan Weinberger**

Law360, New York (May 04, 2015, 7:22 PM ET) -- [Quicken Loans'](#) recent suit against the [U.S. Department of Justice](#) shows it is willing to take a stand to put a stop to the agency's abuse of power in its probe of mortgage lenders, the company's attorney told Law360.

Detroit-based Quicken Loans Inc. took the unusual but not unprecedented step of [suing the DOJ](#) on April 17, alleging it had effectively taken control of the Federal Housing Administration from the U.S. [Department of Housing and Urban Development](#) and subjected the lender to harassment, threats and a changing of the rules for mortgage origination over the course of a three-year investigation.

Although some attorneys have called the suit, which seeks a declaratory judgment and injunctive relief, a publicity stunt aimed at getting in front of an enforcement action that was filed just days later, Morganroth & Morganroth PLLC managing partner Jeffrey B. Morganroth said the case is about something much bigger than avoiding a costly payout.

“Our case is not about an enforcement action or the [False Claims Act],” Morganroth said in a Monday interview with Law360. “Our case is about the Department of Justice’s abuse of power by retroactively changing the rules of the FHA program in an arbitrary and capricious manner.”

Quicken’s complaint comes as the Justice Department [continues to wield the False Claims Act](#) in cases against mortgage lenders alleged to have used faulty underwriting standards to defraud the FHA. The most recent settlement came in February, when [MetLife Inc.](#) agreed to a \$123.5 million deal. In June, [SunTrust Mortgage Inc.](#) agreed to pay nearly \$1 billion to settle

claims similar to those MetLife later copped to. And talks between the DOJ and [Wells Fargo & Co.](#) over a similar settlement have broken down.

Quicken's case will thus be watched closely by the mortgage industry, said Andrew L. Sandler, chairman of [BuckleySandler LLP](#).

"Quicken has raised some very real and significant concerns about the current approach," he said.

Quicken alleges that the Justice Department and HUD, which is also a defendant in the suit, told the firm that the investigation was based solely on the size of the firm's lending operations and importance to the FHA when Quicken opened about three years ago.

However, the tone of the investigation changed over time, and the Justice Department and HUD altered the way that they retroactively reviewed mortgages that Quicken issued between 2007 and 2011, the complaint said.

Quicken is asking a federal court to force the Justice Department and HUD to go back to examining the company's lending practices on a loan-by-loan basis that had been in place prior to an abrupt change. The company is also looking for a ruling that its lending practices were appropriate and that the loans it issued do not pose an undue threat to the FHA.

Those complaints are common across the mortgage lending industry, Sandler said.

"Insofar as Quicken is alleging that the Justice Department approach in extrapolating from small nonrandom sets of files is problematic, that is a common problem in these investigations," he said.

Quicken also alleges that the DOJ had repeatedly threatened to take the case to court and was attempting to get the company to admit to false statements and other actions that it had not committed.

Because of that, Quicken had no choice but to go to court to seek a declaratory judgment, to both defend itself and bring some certainty to the industry, Morganroth said.

“At some point you’ve got to draw a line in the sand,” he said. “You’ve got to bring these threats to a head and actually get a ruling from a court.”

And with that declaratory ruling, Morganroth and Quicken are hoping for injunctive relief that “tells the Department of Justice and the other defendants that you can’t continue your unlawful conduct,” Morganroth added.

But to many outside observers, Quicken’s complaint filed in Detroit federal court is little more than an attempt to get their story out before the DOJ could move forward with its complaint.

“This thing reads like a press release,” said FCA expert Ben Vernia of the Vernia Law Firm. “They knew the suit was imminent, and they wanted to get out first with their version of the facts.”

Indeed, the Justice Department **sued Quicken in D.C. federal court** over alleged FCA violations, just days after the company launched its complaint.

Although the cases take different tacks, filing first gives Quicken another way to fight — on venue.

The company on Wednesday filed a motion to either stay the DOJ’s case or transfer it to Detroit based on Quicken having first filed its suit.

Morganroth said that all the relevant facts, documents and individuals are located in the Eastern District of Michigan and that having a separate case in Washington wastes resources and creates the risk of conflicting rulings.

The Justice Department may have had a more sinister motive as well, Morganroth said.

"In terms of retaliation, I would assume yes, they were striking back at the claims that Quicken Loans has brought by filing their own action" and engaging in forum-shopping, he said.

Filing first also gave Quicken the opportunity to launch some claims against the government that would not necessarily fit into a motion to dismiss or any other early portions of a case, [Crowell & Moring LLP](#) partner Robert Rhoad said.

"That's very frustrating for defendants, because many of them want to tell their own story and there's really no vehicle early in the proceedings to do that," Rhoad said.

However, attorneys say Quicken faces long odds in its case against the government.

Other firms have tried similar preemptive strikes in other cases and failed, including [Allergan Inc.](#) in its 2010 battle over Botox, Vernia said.

Other attorneys are less generous, saying that federal law grants discretion to the Justice Department and preemptive lawsuits cannot succeed.

"Listen, this is crazy," said Jeff Ifrah of the [Ifrah Law](#), a specialist in FCA cases. "You don't gain any credibility by preparing a claim that you know is going to fail."

But if the judges in Detroit and Washington take the bigger-picture perspective that Quicken is pushing, Morganroth is hopeful the case could be so crazy that it just might work.

“Whether the government ever filed an FCA claim or not, these are real claims that Quicken Loans had violations of the [Administrative Procedure Act], constitutional due process rights and the program rules that were in effect pursuant to contracts of insurance,” he said.

The case is Quicken Loans Inc. v. United States of America, case number [2:15-cv-11408](#), in the U.S. District Court for the Eastern District of Michigan.

--Editing by Jeremy Barker and Edrienne Su.