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The Quarter

Newsletter of the Pennsylvania Department of Banking

pennsylvania
DEPARTMENT OF BANKING

Protect. Regulate. Inform.

A Return to Common Sense

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A Return to Common Sense

by Steve Kaplan, Secretary of Banking

On July 21, 2010, the "Dodd-Frank Wall Street Reform and Consumer Protection Act" was signed by President Obama and became the law of the land. This large and multi-faceted piece of legislation will be implemented and interpreted over the years to come and will shape and reshape the way in which financial products and services are created and sold in the United States and around the world. Some aspects of this law will also affect the way we think about and execute our mission here in the Pennsylvania Department of Banking.

Over the next few issues of "*The Quarter*," I plan to discuss the aspects of this law that are most likely to influence our approach to financial services regulation, beginning with a review of the doctrine called "federal preemption."

Since the creation of the National Bank Charter during the Civil War, it has been clear that, if a truly national system is to exist at all, it must be able to operate without states interfering with or impairing national banks' ability to perform the functions of a bank.

This approach to federal preemption of state laws meant that states could not act in a manner that would undermine the federal system by making it impossible or impractical to operate a national bank while still recognizing a state's traditional right to protect the safety and welfare of its citizens by policing some aspects of business being done within its borders.

The Supreme Court notably upheld this century-old principle in the 1996 *Barnett Bank* decision when it concluded, "In defining the pre-emptive scope of statutes and regulations…Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted. *To say this is not to deprive States of the power to regulate national banks, where* (unlike here) *doing so does not prevent or significantly interfere with the national bank's exercise of its powers.* [emphasis added]…."

However, things began to change in 2003, when the Office of the Comptroller of the Currency proposed a regulation that preempted almost all state laws regarding nationally chartered institutions. In 2007, the U.S. Supreme Court in *Watters v. Wachovia Bank, N.A.* described state objections to this rule as "beside the point," in essence giving a federal regulator *carte blanche* to preempt entire categories of state banking and consumer protection laws.

Next, *Watters* also extended this blanket preemption to companies that were not national banks but that were owned by national banks. Thus a huge new group of organizations, called operating subsidiaries or "op subs," was now covered by the doctrine.

Finally, the traditional role of the courts in determining what state actions would be permitted was altered to allow the Office of the Comptroller of the Currency to decide when state regulatory efforts would be considered appropriate with courts respecting those decisions they were found to be "arbitrary or capricious," a standard that would rarely be met.

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During the era of aggressive deregulation, which continued into much of the present decade, these three factors came together to create a situation in which the Comptroller of the Currency forbid any action by states that in any way restricted the business practices of nationally chartered institutions or their op subs. When confronted with state action, giant organizations could avoid state regulators either by becoming or selling themselves to federally chartered institutions.

The net effect of this recent expansion of federal preemption was that state regulators were deprived of the ability to address burgeoning consumer abuses even as our federal counterparts chose, consciously, not to.

Under the approach of the Dodd-Frank law, we will see a return to traditional, common sense approaches: the *Barnett* standard for preemption and the court's role as arbiter without undue deference to the federal perspective. With the passage of Dodd-Frank comes recognition again of the authority of state regulatory schemes.

It is undoubtedly true that some questions of state versus federal authority may have to be resolved in the courts, but recent history informs us that some "untidiness" is a small price to pay for a return to common sense and good practices regarding the distribution of consumer financial products. Furthermore, because the states will now have the authority to regulate consumer products and services above and beyond federal minimum standards, it will be incumbent on state regulators to understand and advise their legislatures about practices which ought to be regulated at the state level.

For the next several years, I fully expect that our department will be at the center of the action as we strive to balance the competing rights of consumers and of our regulated industries and to devise solutions that will best serve Pennsylvania and all of her citizens. I hope you're all as enthusiastic about meeting this challenge as I am.

Banking Department Issues Statements of Policy on Reverse Mortgages, Loan Modifications

Secretary of Banking Steve Kaplan has announced new statements of policy for the reverse mortgage and loan modification industries. The policies were published in the Pennsylvania Bulletin on July 10.

Because reverse mortgage loans are marketed to consumers 62 years and older, the Department of Banking is concerned about the potential for this vulnerable population to be victimized by either bad advice or outright fraud. The reverse mortgage statement of policy should provide licensees who engage in this business with guidance regarding the Department of Banking's interpretation of the proper conduct of the reverse mortgage loan business. This statement of policy can be found online. Also, the Department of Banking has issued a consumer information brochure available online at: www.banking.state.pa.us.

The guidance expressed in the loan modification statement of policy should allow licensees to avoid placing those who are struggling with their existing mortgage loans into inappropriate loan modifications. This statement of policy can be found online.

While these statements of policy are not regulations, and therefore do not have the force and effect of law, these statements will provide licensees with important guidance regarding how the Department of Banking will review licensee conduct of mortgage loan modifications and reverse mortgage loan programs.

Pennsylvania to Host 'Broadband Summit' this Fall

The public is invited to attend the 2010 Pennsylvania Broadband Summit on Sept. 20 – 21. The free event will explore practical applications of broadband technology, potential solutions to challenges related to access and adoption, as well as details of the state and national broadband plans.

"In order for Pennsylvania to take advantage of the opportunities presented by the federal stimulus, we need to work closely with broadband providers, anchor institutions, consumers and officials at all levels," says Luc Miron of the Governor's Office of Administration, organizer of the 2010 Pennsylvania Broadband Summit. "This summit is an opportunity for all of these stakeholders to network and learn, as well as discuss, plan and share information and best practices."

Under state legislation enacted in 2004, every Pennsylvania community will have broadband access through its local telephone company by 2015. Despite the enormous progress over the years, bringing broadband technology to Pennsylvania's rural, mountainous and heavily forested regions remains a challenge.

The American Reinvestment and Recovery Act (ARRA) of 2009, also commonly called the federal stimulus program, includes $7.2 billion to expand broadband services and infrastructure, especially in unserved and underserved populations.

The 2010 Pennsylvania Broadband Summit takes place September 20 - 21 at the Radisson Penn Harris Hotel and Convention Center in Camp Hill, Cumberland County. To register or learn more, visit www.outreach.psu.edu/PABroadband.

Banking Department Announces Quarterly Report on Enforcement Actions

The Department of Banking took 26 enforcement actions and suspended 152 mortgage originator licenses during the second quarter of the year.

Included in the actions, the department:

- Issued six cease and desist orders against companies engaged in unlicensed loan modification activities.
- Entered consent agreements with 10 mortgage loan companies for violations of the Mortgage Licensing Act and/or unlicensed activity.
- Issued a cease and desist order against an Internet payday lender after receiving complaints from a Pennsylvania consumer who was charged interest and fees in excess of state law.
- Suspended 152 mortgage originator licenses for failure to meet licensing related requirements.

A comprehensive list of non-depository enforcement actions taken by the Department of Banking is available online at www.banking.state.pa.us. Consumers can file a complaint against any company regulated by the Department of Banking online or by calling **1-800-PA-BANKS**.

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Four Pennsylvania Teachers Honored with ‘Ripple Effect’ Awards for Efforts to Promote Financial Education

Four Pennsylvania teachers who have worked to improve financial education in their schools and communities were honored on July 16 during the third annual “Ripple Effect” Awards Ceremony during the Governor’s Institute on Financial Education.

The 2010 Ripple Effect Award winners are:

- **Jill Bargiel**, Juniata Valley Junior/Senior High School, Huntingdon County
- **Chuck Deal**, Neshaminy High School, Bucks County
- **Kimberly Preston**, Bradford Area High School, McKean County
- **Sharon Storch**, Burrell High School, Westmoreland County

The Ripple Awards were started in 2008 as a way to reward exceptional teachers for their exciting and innovative ways for students in Pennsylvania to learn about personal finance.

Jill Bargiel, Chuck Deal, Kimberly Preston and Sharon Storch accept their 2010 Ripple Effect Awards at Elizabethtown College

“It is more important than ever that we provide young people with the financial tools they will need to succeed as adults,” Secretary of Banking Steve Kaplan said while congratulating the winners. “The educators recognized with this award are meeting and overcoming the challenges of tight budgets and scheduling hassles to pioneer new ways of teaching some of the most important lessons students will ever learn.”

The awards were presented at the conclusion of the Governor’s Institute on Financial Education at Elizabethtown College in Lancaster County. The weeklong program, offered by the Pennsylvania Office of Financial Education, is designed to help teachers at all grade levels integrate financial concepts – such as budgeting, saving and borrowing wisely – into their existing lesson plans. Approximately 90 teachers attended the Institute, which is now in its sixth year.

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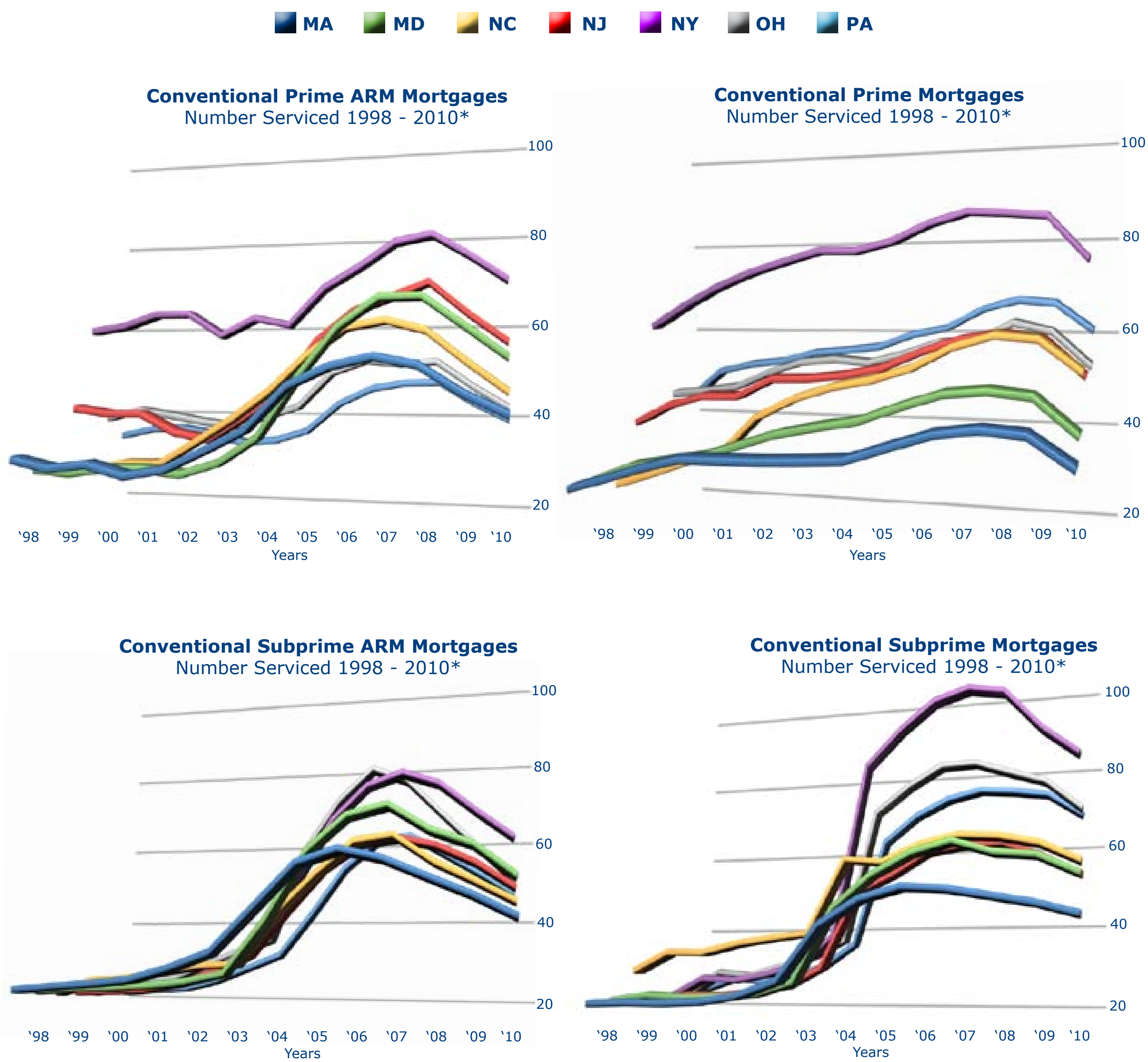
RESEARCH QUARTER

State Trends: States often have different experiences in the marketplace, but trend analyses of the servicing of four mortgage loan types in seven states show a striking similarity. Data supplied by the Mortgage Bankers Association National Delinquency Survey.



* Service Numbers are in thousands