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Viewpoint

Feds must collaborate with states on bank regulation

Premium content from Puget Sound Business Journal by Rob McKenna, Guest Columnist

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The worst financial crisis since the Great Depression did not sneak up on us: the collapse of the housing market. The crumbling of financial institutions. The massive expansion of consumer debt. Some of us saw telling symptoms of these illnesses in our economy.

State attorneys general warned federal officials years ago that there would be consequences for paying insufficient attention to meaningful consumer protection, particularly related to predatory lending practices. Only now, with record numbers of mortgages in default and the economy in crisis, do officials in the other Washington seem willing to listen.

Two state attorneys general met with the nation's top bank regulator in April 2003. They sought help responding to a massive increase in abusive home loans with puffed-up interest rates, fees buried in fine print and substantial hidden risks for borrowers. But the federal agency responsible for oversight of national banks, the Office of the Comptroller of the Currency (OCC), dismissed these concerns. OCC continued to deliberately block state jurisdiction over national financial institutions.

Six years later, we're still struggling for the right to enforce state consumer protection laws against national banks that do business with our residents.

Attorneys general nationwide penned a 14-page letter to the OCC after that failed meeting. They criticized the agency's disregard for a precedent that had allowed it and the states to coexist in a dual regulatory role for more than 130 years. The precedent held that national banks were generally subject to state laws, so long as those laws did not significantly conflict with the banks' rights

under federal law. The OCC decided, after all those years, that state laws were impermissible burdens on national banks and that only it had the right to regulate banks.

In March 2006, while investigating Ameriquest and other subprime lenders, Attorney General Tom Miller of Iowa and I sought another meeting with the OCC to renew our concerns. We were alarmed at the predatory lending practices we were seeing. OCC officials refused to meet with us.

"A hands-off regulatory approach and a series of narrowly targeted laws led the industry to act as if they could do anything that was not specifically prohibited. This approach by the federal government allowed credit products to become more dangerous to consumers," wrote James Tierney in recent testimony to members of a congressional subcommittee. Tierney is director of the National State Attorney General Program at Columbia Law School and a former Maine attorney general.

After this long period of frustration, however, we are beginning to see signs of hope.

In early March, I joined other attorneys general in Washington, D.C., to discuss the banking crisis. Federal Deposit Insurance Corp. Chairman Sheila Bair and U.S. Attorney General Eric Holder attended our meeting and made a commitment to building open partnerships with us.

"A failure to promulgate and enforce stronger consumer protection rules applying to all mortgage lenders contributed significantly to this crisis," Bair said. "And unfortunately, in policing mortgage lending practices, instead of working together, federal and state officials were too often at odds. We must work together now."

Holder and officials from the U.S. Department of Housing and Urban Development, the Federal Trade Commission and the U.S. Treasury recently announced a coordinated effort across federal and state government and the private sector to target loan modification fraud and foreclosure rescue scams. Holder expressed the Department of Justice's commitment to reinvigorate the Executive Working Group, which allows state and federal agencies to coordinate on consumer fraud issues.

Several other attorneys general and I are planning to meet next month with U.S. Comptroller John Dugan and Rep. Barney Frank (D-Mass.) to discuss the states' need to be able to more effectively protect consumers from questionable banking practices.

We hope this reopening of doors will permit the attorneys general to do what we do best: protect consumers and businesses from abusive practices.

The states brought allegations of widespread predatory lending against

Household International, resulting in a landmark \$484 million settlement in 2002. My office took a leading role in that case and in the \$325 million nationwide settlement with Ameriquest in 2006. In 2008, I joined a small group of state attorneys general who settled with Bank of America for \$8.4 billion over Countrywide's subprime lending loan practices that pushed many borrowers into or to the brink of foreclosure.

The states bring a unique, local perspective to consumer protection that no federal official can duplicate. We understand what is happening in consumers' economic lives. Cooperation, rather than contention, between the two Washingtons makes the best use of our respective abilities. Our country's founders recognized the value of a dynamic federalism. It's time federal agencies like the OCC did, too.

ROB McKENNA is attorney general of Washington state and co-chair of the Environment and Energy Committee of the National Association of Attorneys General.

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