

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RAMON BLANCO, individually, and on
behalf of all those similarly situated,

Plaintiff,

vs.

KEY BANK USA, N.A.,

Defendant.

CLASS REPRESENTATION

Case No.: 1:04-cv-230

Judge Dan Aaron Polster

**SUPPLEMENTAL BRIEF IN FURTHER OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS**

This Supplemental Brief is being filed in further opposition to Key Bank's pending motion to dismiss this case on federal preemption grounds. As this Court knows, Key Bank has argued that plaintiffs' cause of action under the Ohio Retail Installment Sales Act ("RISA"), which makes lenders (such as Key Bank) subject to all the defenses and claims that a buyer would be able to assert against a seller, is preempted by federal regulations promulgated by the Office of the Comptroller of Currency (the "OCC") and set forth at 12 C.F.R. § 7.4008(d). *See* 69 Fed. Reg. 1904 (January 13, 2004).¹

According to Key Bank, these regulations "reaffirm" that "the ability of national banks to lend money and collect on loans made is based on and governed by the National Banking Act, *and cannot be impaired by state law.*" Motion to Dismiss at 11 (emphasis added). Key Bank goes on to assert that, because the RISA cause of action goes beyond the requirements of federal

¹ This regulation provides, *inter alia*, that "[e]xcept where made applicable by Federal law, state laws that obstruct, impair, or condition a national bank's ability to fully exercise its Federally authorized non-real estate lending powers are not applicable to national banks."

law as set forth in the so-called “FTC Holder Rule,” this case would “impair” the bank’s ability to lend money and collect loans, and thus is preempted by the OCC regulations.²

Plaintiffs submit this pleading in order to apprise the Court of additional authority relating to Key Bank’s motion and further explain why their RISA claim does not conflict with – but instead actually furthers – federal purposes.

ARGUMENT

PLAINTIFFS’ RISA CLAIM IS NOT PREEMPTED BECAUSE IT DOES NOT CONFLICT WITH FEDERAL PURPOSES.

I. Plaintiffs’ RISA Cause of Action Does Not Conflict With or Otherwise Undermine National Banks’ Federally Authorized Powers.

As a threshold matter, it is important to clarify that the OCC regulations merely preempt state laws that “prevent” or “significantly interfere with” federal purposes. *See Barnett Bank of Marion Cty. v. Nelson*, 517 U.S. 25, 33 (1996). In its motion to dismiss, Key Bank suggested that the OCC regulations broadly preempt all state laws affecting the activities of national banks, regardless of the presence of an actual conflict. The OCC itself, however, has disavowed such a broad reading of its regulations. In fact, in the regulatory preamble to the new rules (which is the authoritative guide to federal purposes, *see Geier v. Honda*, 529 U.S. 861, 875 (2000)), the agency expressly declined to adopt a field-preemption standard and instead adopted the existing,

² The FTC Holder Rule obligates all sellers entering into “consumer credit contracts” or accepting the proceeds of “purchase money loans” to assure that sales finance contracts and loan contracts contain one of two clauses that preserve the buyer’s right to assert against any “holder” of the credit contract the sales-related claims and defenses that the buyer may have against the seller. *See* 16 C.F.R. § 433.2. Unlike the RISA statute, the Holder Rule is not directly enforceable against third-party creditors. As discussed *infra*, however, the Rule’s practical and intended effect is to regulate the conduct of *both* sellers and third-party creditors (such as Key Bank) and thus its goals and purposes are essentially identical to the RISA statute.

conflict-preemption standard set forth in U.S. Supreme Court cases such as *Barnett Bank, supra*, 517 U.S. at 25. *See* 69 Fed. Reg. at 1910 (stating that final rule’s preemption standard “is drawn directly from applicable Supreme Court precedents,” and expressly “declin[ing] to adopt the suggestion of these commenters that we declare that these regulations ‘occupy the field’ of national banks’ . . . activities”). *See also id.* at 1911 (stating that the new OCC regulations are merely intended to preempt “types of state laws that can *materially affect and confine* – and thus are inconsistent with – the exercise of national banks’ . . . lending powers”) (emphasis added).³ Under this conflict preemption standard, state law is *only* preempted to the extent that it “prevent[s] or significantly interfere[s] with the national bank’s exercise of its powers.” *Barnett Bank*, 517 U.S. at 33. As explained below, plaintiffs’ RISA claim does not run afoul of this standard; to the contrary, the claim actually *further*s important federal purposes as embodied in the FTC Holder Rule.⁴

A. Plaintiffs’ RISA Claim Is Entirely Consistent with the Goals Underlying the FTC Holder Rule.

Key Bank’s principal argument is that plaintiffs’ RISA claim must be preempted because it is nothing more than a backdoor attempt to apply the FTC Holder Rule to banks. Key Bank

³ The OCC took the same position in a “Question and Answer” sheet listed on its website, which states (among other things) that, “although we believe the statute authorizing national banks’ real estate lending activities (12 U.S.C. § 371) could permit the OCC to occupy the field of national bank real estate lending through regulation, we have declined to announce such a position in the final rule.” *See* “Preemption Final Rule, Questions and Answers, January 2, 2004,” at 1, *available at* www.occ.treas.gov/2004-3dPreemptionQNAs.pdf.

⁴ In addition, as explained *infra* at Point II, the OCC lacks authority to preempt the entire field of state law. For this reason alone, any broader reading of the OCC regulations must be rejected.

points out that the Federal Trade Commission (“FTC”) actually rejected a regulation that would have required lenders to include the FTC Holder Rule in their loan documents. *See* Def. Br. at 14 n.9. Given this federal decision not to impose precisely the obligation that plaintiffs here seek to impose under RISA, Key Bank concludes that plaintiffs’ RISA claim interferes with federal purposes and thus violates the OCC’s regulations.

The regulatory materials accompanying the original FTC Holder Rule disprove Key Bank’s argument. The preamble to the Rule makes crystal clear that the federal government fully intended for banks to be subject to the strictures of the Rule, even though they cannot be held legally accountable for violating its terms. *See* 40 Fed. Reg. 53506 (November 18, 1975) (Exhibit A hereto). There, the FTC explained that its “primary concern . . . has been the distribution or allocation of costs occasioned by seller misconduct in credit sale transactions.” *Id.* at 53522. The agency stated that “[t]he current commercial system[,] which enables sellers and creditors to divorce a consumers’ obligation to pay for goods and services from the seller’s obligation to perform as promised, allocated all of these costs to the customer/buyer.” *Id.* This was problematic and unfair, in the FTC’s view, because “[c]onsumers are generally not in a position to evaluate the likelihood of seller misconduct in a particular transaction.” *Id.*⁵

To solve this problem, the agency consciously chose to impose the costs of seller misconduct on the *creditor* – the best party, in the FTC’s view, to bear this responsibility. *See*

⁵ Notably, the agency specifically singled out “courses of training and instruction” as a particular area of concern whereby seller misconduct has been unfairly passed on to innocent consumers. *See id.* at 53510 (listing various trade schools). *See also id.* at 53524 (noting that “[t]he rule expressly applies to credit contracts arising from sales of services, such as trade or vocational school agreements as well as sales of consumer tangibles.”).

id. at 53523. This choice reflected the agency’s conclusion that, “as a practical matter, the creditor is always in a better position than the buyer to return seller misconduct costs to sellers, the guilty party.” *Id.* The agency found that “a rule which compels creditors to . . . absorb seller misconduct costs will discourage many of the predatory practices and schemes discussed [above].” *Id.* See also *id.* at 53524 (FTC Holder Rule designed to ensure that “*creditors* will be responsible for seller misconduct,” because “[w]e can imagine no reasonable measure of value which could justify requiring consumers to assume all risk of seller misconduct, particularly where *creditors* who profit from consumer sales have access to superior information combined with the means and capacity to deal with seller misconduct consists expeditiously and economically”) (emphases added); *id.* at 53509 (noting that, “[b]etween an innocent consumer, whose dealings with an unreliable seller are, at most, episodic, and a finance institution. . . , the financier is in a better position both to protect itself and to assume the risk of a seller’s responsibility”); *id.* at 53524 (noting that “creditors are always in a better position than consumers to return misconduct costs . . .”).

Thus, the whole point of the FTC Holder Rule is to impose the costs of seller misconduct on *creditors*, who are in the best position to evaluate the risks of any given transaction. Given this goal, it is hard to imagine how plaintiffs’ RISA claims are inconsistent with the purposes underlying the FTC Holder Rule. In reality, plaintiffs’ claims directly further federal purposes by making banks like Key Bank liable for the misconduct of the sellers with whom they choose to do business.

In response, Key Bank may contend that plaintiffs’ RISA claim conflicts with federal purposes because the FTC Holder Rule was intended to provide an upper limit on the extent of

liability that can be imposed on banks. Any such argument would be disproved, however, by guidelines promulgated by the FTC contemporaneously with the passage of the FTC Holder Rule. *See Staff Guidelines on Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses*, 41 Fed. Reg. 20022 (May 14, 1976) (Exhibit B hereto). There, the agency stated that, although the required FTC Holder Notice states that a consumers' "recovery hereunder" is limited to certain amounts, *the FTC Rule does not limit a larger recovery under a different state or federal law*. The FTC specifically wrote that "[t]he limitation on affirmative recovery does not eliminate any other rights the consumer may have as a matter of local, state, or federal statute. The words 'recovery hereunder' which appear in the text of the Notice refer specifically to a recovery under the Notice. If a larger affirmative recovery is available against a creditor *as a matter of state law*, the consumer would retain that right." *Id.* at 7 (emphasis added). This is entirely consistent with this case, which simply seeks a "larger affirmative recovery" against Key Bank than would be permitted by federal law.

It is ironic that the only reason the federal preemption question has even arisen in this case is because the plaintiffs' loan contracts were issued *in violation of federal law*. If those contracts had contained the language required by the FTC Holder Rule, then Key Bank would be contractually subject to all the claims and defenses that plaintiffs could have asserted against the seller, and there would be no issue of federal preemption in this case. It is only because the contracts were issued *in violation* of federal law that Key Bank can even attempt to avoid liability here. Under these circumstances, permitting plaintiffs' to proceed with their RISA claim will actually *vindicate* federal purposes by putting Key Bank in the same position that it would have been in if the FTC Holder Rule had not been violated in the first place. Against this

backdrop, Key Bank's contention that this case would undermine federal purposes rings hollow.

B. Plaintiffs' RISA Claim is Entirely Consistent with the Agency's Decision Not to Make the FTC Holder Rule Enforceable Against Banks.

Key Bank defends its position by pointing to the fact that the federal government affirmatively decided not to make the FTC Holder Rule enforceable against third-party creditors. This decision, Key Bank suggests, necessarily implies a federal determination that creditors who violate the FTC Holder Rule should *never* be held subject to the same defenses as could be asserted against sellers, even where such a cause of action exists under state law. The regulatory history of the FTC's decision, however, disproves Key Bank's point.

At the time the FTC promulgated the original Holder Rule, it commenced a proceeding to amend the Rule to make it directly enforceable against third-party creditors. *See* 53 Fed. Reg. 44456 (November 3, 1988) (discussing history of FTC Holder Rule). After many years, however, the agency decided not to make creditors subject to federal punishment for violation of the FTC Holder Rule. *See id.* To explain its decision, the OCC stated, first, that its legal standards for evaluating unfairness had changed since it issued its original proposal, and that, in light of these new standards, "the evidence is inadequate to support issuance of the proposed amendment." *Id.* The OCC then stated that "the record contains little evidence of consumer injury occurring after the Holder Rule became effective and little evidence to suggest that creditor participation in cutting off consumers' claims is prevalent." *Id.* The agency noted, however, that "this decision does not, of course, foreclose the Commission from considering in the future whether the Rule should be extended to creditors," *id.* at n.4, and it specifically sought public comment on "[w]hat evidence, if any, is there now that the Rule should be extended to creditors." *Id.* at 44458.

This language could not be more telling with regard to the agency’s purposes and the absence of any conflict between plaintiffs’ claims and federal goals. Contrary to Key Bank’s arguments, the sole reason the FTC decided not to extend the FTC Holder Rule to third-party creditors was that there was insufficient evidence of “consumer injury” or of “creditor participation in cutting off consumer claims” to justify this approach. In other words, *because the FTC Holder Rule was already being followed by sellers and creditors in most cases*, the agency concluded that there was little need affirmatively to extend it to banks. This is a far cry from a decision that banks should affirmatively be permitted as a matter of federal law to conduct their business in violation of the FTC Holder Rule. Rather, it is merely a finding that, *as of that time*, there was insufficient evidence of a universal problem to justify increased federal regulation of national banking activities, but that such additional regulation might be warranted at some point in the future.

As the U.S. Supreme Court recently instructed, that sort of reasoning – *i.e.*, that insufficient data currently exists to justify a universal federal regulation, but that some form of regulation might be appropriate in the future – does not even remotely resemble a basis for finding implied conflict preemption of state-law claims. *See Sprietsma v. Mercury Marine Corp.*, 537 U.S. 51 (2002). *Sprietsma* considered whether the U.S. Coast Guard’s decision not to require propeller guards on all recreational boat engines impliedly preempted common-law claims that a boat manufacturer was negligent for failing to install a propeller guard on a particular boat engine. The Court held that the mere decision not to regulate does not exert any preemptive force; instead, the question is whether the common-law claims would undermine the agency’s stated *reasons* for declining to regulate. *Id.* at 65.

Sprietsma went on to hold that, because the Coast Guard never found that propeller guards are unsafe, but instead merely found that it lacked available data to justify a uniform federal rule requiring propeller guards on all boats – in part because there was no “universally acceptable” propeller guard model suitable for use on all boats and in part because of the high cost of “retrofitting millions of boats” (*see id.* at 66-67) – the common-law claims would not undermine any federal regulatory purposes and must be permitted to proceed.

This reasoning applies here with full force. First, *Sprietsma* makes clear that the FTC’s mere decision not to extend the Holder Rule to banks does not, in and of itself, possess any preemptive force. Second, *Sprietsma* teaches that a decision not to regulate based on an agency’s finding that there is insufficient evidence to justify a federal rule – but that such a rule might be warranted in the future – also lacks any preemptive effect. As with the Coast Guard’s decision in *Sprietsma*, the OCC merely found that, due to “insufficient evidence” of a widespread problem of creditors cutting off consumer defenses, there simply was no justification for further federal regulation in the area. And, as in *Sprietsma*, the agency never said that such a regulation would never be justified; to the contrary, it said that such a rule might be warranted in the future, and that it would continue to study the issue. This is precisely the sort of reasoning that, under *Sprietsma*, cannot be said to preempt any common-law claims.⁶

⁶ This argument is not inconsistent with the ruling in *Abel v. Key Bank*, Case No. 1:03 CV 524, that the federal government has never created a private cause of action for violation of the FTC Holder Rule or made the Rule directly applicable to creditors. *See* Memorandum of Opinion and Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss. Although plaintiffs disagree with that ruling (which was rendered without benefit of any of the arguments set forth herein), the fact remains that the absence of a private cause of action for enforcement of the FTC Holder Rule under federal law does not translate into an affirmative federal determination to wipe out similar causes of action that may exist under state law. In fact, as demonstrated by the regulatory history cited above, the sole reason that the federal

C. Plaintiffs' Claims Will Not Unduly Burden Banks' Ability to Conduct Federally Authorized Business.

Key Bank never discusses *Sprietsma* in its motion to dismiss. Instead, in addition to arguing about the FTC Holder Rule, Key Bank argues that plaintiffs' RISA claim should be held preempted because it would unduly interfere with banks' ability to conduct their business. Thus, for example, Key Bank suggests that statutes like RISA must be preempted because, otherwise, banks would have to bear the heavy burden of scrutinizing the legitimacy of sellers with whom they choose to do business. *See* Def. Motion at 14 (“[RISA] effectively makes national banks insurers for the poor performance of unrelated parties or for purchases that go awry, dramatically interfering with banks' lending processes”). *But that is already the “burden” imposed on banks by virtue of the FTC Holder Rule, the whole point of which is to make third-party creditors subject to the same claims and defenses as sellers. See, e.g.,* 40 Fed. Reg. at 53524 (goal of Rule is to “impel creditors to exercise reasonable care in financing certain sales transactions”). In other words, the “burden” that Key Bank seeks to avoid is one that federal law *already places on it* with respect to its dealings with reputable sellers. The only reason that “burden” is not present in this particular case is because Key Bank chose to enter into loan contracts that violated federal law. Key Bank's attempt to leverage this situation into a reason to avoid any liability under the RISA statute – a law that, for all intents and purposes, is animated by exactly the same concerns as the FTC Holder Rule – should be rejected out of hand.

government decided not to apply the FTC Holder Rule to creditors is because such a rule appeared not to be necessary due to creditors' *voluntary* compliance with the FTC Holder Rule. This decision is wholly consistent with the availability of state law remedies in those relatively rare cases where – as here – the creditor seeks to evade the letter and the spirit of the FTC Holder Rule by doing business with a disreputable seller and then insisting on payment for services not rendered.

D. Plaintiffs' RISA Claim is Also Not Preempted Because Key Bank's Activities Were Not "Authorized" by Federal Law.

If any doubt remained about the extent of a conflict between plaintiffs' RISA claim and federal purposes, it would be dispelled by another aspect of the OCC regulations that has previously gone unmentioned in this case. On their face, those regulations merely preempt "state laws that obstruct, impair, or condition a national bank's ability to fully exercise its *Federally authorized* non-real estate lending powers" 12 C.F.R. § 74008(d) (emphasis added). Under this language, only state laws that interfere with "federal authorized" lending are even arguably subject to a finding of federal preemption.

For all the reasons stated above, the conduct at issue in this case is not "federally authorized" in any meaningful respect. To the contrary, Key Bank's dealings with the Academy were premised on an outright violation of the FTC Holder Rule. The fact that Key Bank itself cannot be federally prosecuted by the FTC for its decision to enter into a contract that violated the FTC Holder Rule does not mean that its activities are "authorized"; it merely means that its conduct, although clearly in violation of the federal policies underlying the FTC Holder Rule, is not affirmatively actionable by the federal government. It defies logic to contend, as Key Bank must to prevail on its motion, that the mere absence of a federal prohibition automatically constitutes "authorization" within the meaning of the OCC regulations. Clearly, the opposite is true, and this alone is reason enough to reject any finding of federal preemption in this case.

II. The OCC's Regulations Are Invalid to the Extent They Seek to Preempt the Entire Field of State Law.

In response, Key Bank may contend that the OCC's regulations go beyond the conflict preemption standard of *Barnett Bank* to preempt the entire field of state law in the banking area.

Any such argument must fail, however, because the OCC lacks the authority under the national banking laws to preempt the field of banking law.

Although a federal agency may preempt state law through its regulations, its ability to do so is limited by the scope of its congressionally-delegated authority. *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Because the OCC is charged with enforcing the National Bank Act (“NBA”), 12 U.S.C. §§ 21, *et seq.*, it cannot take action that goes beyond the boundaries of the Act itself. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979). Therefore, if the national banking laws do not demonstrate congressional intent to occupy the banking field, any action by the OCC purporting to preempt the field would exceed its authority and thus be invalid.

The history of the National Bank Act and its successor laws reveals that Congress never intended to occupy the entire field of banking law. It is well-settled that the National Bank Act, originally enacted in 1864, does not displace all state law; rather, Congress intended for national banks to be subject to the dual regulation of state and federal authorities.⁷ Since the passage of the National Bank Act, the Supreme Court has stated on numerous occasions that Congress intended for the scope of the National Bank Act to encompass only conflict preemption, not field

⁷ *See, e.g., Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27, 38 (1980) (“[B]oth as a matter of history and as a matter of present commercial reality, banking and related financial activities are a matter of profound local concern.”); *National State Bank v. Long*, 630 F.2d 981, 985 (3d Cir. 1980) (noting that Congress did not preempt the field of banking law because “[w]hatever may be the history of federal-state relations in other fields, regulation of banking has been one of dual control since the passage of the first National Bank Act in 1863.”); *see also* Patricia M. McCoy, *BANKING LAW MANUAL*, § 2.01 (2d ed. 2002) (“The dual American system of banking is premised on a federalist division of powers and divides the regulation of depository institutions between the federal government and the states.”).

preemption.⁸ Myriad lower courts have followed the Supreme Court’s lead and refused to read the National Bank Act as occupying the field of banking law.⁹ Thus, the courts have made clear that the National Bank Act does not authorize the OCC to preempt the field of banking law at the expense of state law.

The legislative history of the Riegle-Neal Act, 108 Stat. 2338 (1994), which amended the national banking laws to allow interstate branching, further confirms that the OCC lacks the

⁸ See, e.g., *Barnett Bank v. Nelson*, 517 U.S. 25, 33 (1996) (holding that states can regulate a national bank unless state laws “prevent or significantly interfere with the national bank’s exercise of its powers.”); *McClellan v. Chipman*, 164 U.S. 347, 356-57 (1896) (holding that “National Banks are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the State than of the Nation,” and that federal preemption is a narrow exception to the general rule that applies only when state laws “expressly conflict with the laws of the United States, or frustrate the purpose for which the national banks were created, or impair their efficiency to discharge the duties imposed upon them by the law of the United States.”); see also *Atherton v. FDIC*, 519 U.S. 213, 222 (1997) (noting that the history of the National Bank Act is replete with instances where “this Court held that federally chartered banks are subject to state law.”).

⁹ For instance, in *Perdue v. Crocker National Bank*, 702 P.2d 503 (Cal. 1985), the California Supreme Court refused to follow an OCC regulation attempting to preempt all state law in the field of deposit-taking on the ground that the OCC’s regulation was inconsistent with congressional intent. See *id.* at 519-25. *Perdue* is not an isolated decision. Other courts have held overwhelmingly that Congress did not intend for the National Bank Act to occupy the field of banking to the exclusion of state law. See, e.g., *National State Bank v. Long*, 630 F.2d 981, 985-87 (3d Cir. 1980); *North Dakota v. Merchants Nat’l Bank and Trust Co.*, 634 F.2d 368, 374-78 (8th Cir. 1980); *Evans v. Federal Reserve Bank of Phila.*, 2004 WL 1535772 at *2 (E.D. Pa. July 8, 2004); *Video Trax, Inc. v. Nationsbank, N.A.*, 33 F. Supp. 2d 1041, 1048 (S.D. Fla. 1998) (“Banking is not an area in which Congress has evidenced an intent to occupy the entire field to the exclusion of the states”); *Booth v. Old Nat’l Bank*, 900 F. Supp. 836, 842 (N.D. W. Va. 1995) (“as Congress has not completely preempted the entire banking field, any preemption must arise out of an actual conflict between a federal and state law”); *Owensboro Nat’l Bank v. Moore*, 803 F. Supp. 24, 34 (E.D. Ky. 1992); *Idaho v. Security Pac. Bank*, 800 F. Supp. 922, 925 (D. Idaho 1992) (“It is clear that Congress has not completely preempted the entire banking field either expressly or impliedly so any preemption must arise out of an actual conflict between federal and state law.”); *Best v. United States National Bank*, 739 P.2d 554, 560-61 (Or. 1987) (Congress intended for national banks generally to be subject to state law).

authority to preempt the entire field of state law in the banking area. The Conference Report explaining the Riegle-Neal Act states that Congress has no intention of “overrid[ing] State basic banking laws, or occupy[ing] the area of basic banking services to such an extent as to displace State laws,” *See* H.R. Conf. Rep. 103-651 at 54, *published in* 1994 U.S.C.C.A.N. 2068, 2074-75, because of the strong state interest in regulating national banks. *Id.* at 2074. Just as important, the Conference Report also states that the OCC acted improperly in attempting to expand the preemptive scope of federal banking law beyond the regime of conflict preemption. *See id.* at 2075 (identifying the agency’s attempt to occupy the field of deposit-taking through its issuance of 12 C.F.R. § 7.8000 as a prime example of the agency overstepping its bounds). Thus, by enacting the Riegle-Neal Act, Congress reaffirmed that the National Bank Act only permits the preemption of state law in the event of an actual conflict with state law. And, although the OCC possesses the authority to enact preempting regulations, those regulations cannot exceed the authority delegated to it by Congress.

CONCLUSION

In light of the foregoing, it is clear that the OCC’s preemption regulations merely preempt state law that actually conflicts with federal regulatory purposes. For all the reasons stated above, there is no conflict here, and thus defendant’s motion to dismiss should be denied.

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