UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

June 7, 2002

The Honorable John P. Burke
Commissioner
Department of Banking
State of Connecticut
260 Constitution Plaza
Hartford, CT 06103-1800

Dear Commissioner Burke:

This letter responds to your April 19, 2001 petition to the Federal Trade Commission ("Commission") for a determination, under 15 U.S.C. § 6807, as to whether Connecticut's financial privacy laws, Conn. Gen. Stat., §§ 36a-41, *et seq*. (2001) ("the Connecticut statute") are preemp2)c4m'|a2y person" unless the customer has authorized

A federal enactment may preempt state law either through (1) express statutory preemption; (2) implied preemption where the intent of the federal law is to occupy the field exclusively ("field preemption"); or (3) implied preemption where state and federal law actually conflict ("conflict preemption"). *See Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 121 S. Ct. 2404, 2414 (2001);

purpose to or otherwise thwarts the objectives of the federal law. Based on the information you have submitted,[(2)] it does not appear to us that the Connecticut statute frustrates the purpose of Subtitle A of Title V of the GLBA. In Section 507, Congress intended to preserve state laws that provide additional privacy protections to consumers. Connecticut's statute, which, with certain exceptions, prohibits the disclosure of "financial records" unless authorized by the customer, appears consistent with the express privacy policy of the GLBA, which imposes on each financial institution "an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information."[(3)] 15 U.S.C. § 6801(a).

The second standard -- whether compliance with both the state and federal laws is physically impossible -- requires determining whether there is an "inevitable collision between the [state and federal] schemes of regulation." *See Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 143 (1963). Under *Florida Lime* and its progeny, if a state law permits, but does not require, conduct that a federal law prohibits, it is not physically impossible to comply with both statutes. *See California Fed. Savings & Loan Ass'n v. Guerra*, 479 U.S. 272, 290-91 (1987); *see also Florida Lime*, 373 U.S. at 143. Conversely, if a state law prohibits what federal law merely permits but does not require, compliance with both statutes is possible. *See Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 218-19 (1983). Thus where Connecticut law *prohibits* disclosure and federal law *permits* disclosure, a Connecticut financial institution can comply with both laws by *not* disclosing the consumer's nonpublic personal information. Likewise, where federal law prohibits disclosure and state law permits disclosure, the financial institution can comply with both laws by not disclosing the information.[(4)] Here, compliance by Connecticut financial institutions with both the federal and state requirements is not physically impossible.

Accordingly, because we do not see an "inconsistency" between the state and federal laws under Section 507(a) based on the information you have submitted, we do not need to reach the Section 507(b) "greater protection" analysis.

By direction of the Commission.

//s//
Donald S. Clark
Secretary

1. In responding to your petition, we have considered the information contained in your April 19 and July 19, 2001 letters.