Defining the Scope of Federal Preemption: State Farm, Exclusive Agents, and Other Emerging Issues

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Introduction

The courts and the federal bank regulatory agencies have recognized that federal law broadly preempts state law with respect to the lending activities of federal savings associations,[1] national banks,[2] and the operating subsidiaries of both.[3] But to what extent does federal law preempt state laws for agents of federal savings associations and national banks? Based upon current authorities, as discussed

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Summaries of leading cases, regulations, interpretive letters, and other information on preemption and federalism issues, including recent developments and links to public copies of preemption and federalism materials discussed in this Survey, are available on the American Bar Association's Preemption Task Force web page. *See* American Bar Association, Section of Business Law: Consumer Financial Services, Preemption, http://www.abanet.org/buslaw/committees/CL230044pub/links.shtml (last visited Nov. 20, 2008).

1. *See* Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 161–63 (1982) (holding that the Federal Home Loan Bank Board, the predecessor of the Office of Thrift Supervision, had the authority to issue regulations that preempt state laws for federal savings associations); 12 C.F.R. § 560.2 (2008) (primary set of preemption regulations issued by the Office of Thrift Supervision).

2. *See* Smiley v. Citibank (S.D.), N.A., 517 U.S. 735, 744 (1996); Nat'l City Bank of Ind. v. Turnbaugh, 463 F.3d 325, 333 (4th Cir. 2006), *cert. denied*, 127 S. Ct. 2096 (2007); 12 C.F.R. §§ 7.4000, 7.4001, 7.4002, 7.4008, 34.4, 560.2, 560.110 (2008).

3. *See* Watters v. Wachovia Bank, N.A., 127 S. Ct. 1559, 1568–69 (2007); WFS Fin. Inc. v. Dean, 79 F. Supp. 2d 1024, 1028 (W.D. Wis. 1999); Preemption of State Mortgage Lender Licensing Requirements, OTS P-99-7 (July 26, 1999), *available at* 1999 WL 989385; 12 C.F.R. §§ 7.4006, 559.3 (2008). *See generally* Michael C. Tomkies, Ralph T. Wutscher & Elizabeth L. Anstaett, *Preemption and Federalism Developments*: Watters *Under the Bridge*, 63 Bus. Law. 703, 704–08 (2008) (in the *2008 Annual Survey*).

below, the nature of the agency relationship may determine the outcome of the analysis.[4]

State Farm Litigation

Background

State Farm Bank, F.S.B ("State Farm Bank"), a federal savings bank, markets and sells various deposit and loan products, such as certificates of deposit and mortgage loans, through a network of exclusive agents.[5] State Farm Bank's agents typically provide information to customers regarding State Farm Bank's products and services and provide ministerial assistance to customers in completing and submitting applications to State Farm Bank, but do not evaluate loan applications, apply underwriting criteria, make lending decisions, or accept loan payments or deposits on behalf of the bank.[6] Each agent is required to enter into an exclusive agency agreement with State Farm Bank, which provides that "the relationship between the Bank and the Agent is that of a company and an independent contractor."[7] Agents participate in State Farm Bank's in-house education and training programs and are subject to the bank's oversight and compliance programs, but are responsible for their own office overhead expenses.[8]

Such agents have historically obtained licenses and submitted themselves to the supervision of state regulators where appropriate.[9] State Farm Bank approached the Office of Thrift Supervision ("OTS") for an opinion whether such state licensing was required for its agents.[10]

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4. In one of the early determinations regarding agents, the Office of the Comptroller of the Currency ("OCC") issued an opinion in response to the request by two national banks for a preemption determination with respect to the Michigan Motor Vehicle Sales Finance Act ("MVSFA"), as interpreted by the Michigan Financial Institutions Bureau. *See* OCC Preemption Determination, 66 Fed. Reg. 28593 (May 23, 2001). The OCC stated that the MVSFA interfered with a national bank's ability to lend by (i) prohibiting a national bank from using automobile dealers as agents to originate bank loans in conflict with 12 U.S.C. § 24 (Seventh) (2006); (ii) preventing a national bank from exercising its power under 12 U.S.C. § 85 (2006) to charge the interest rate permitted by the bank's home state; and (iii) purporting to require a national bank to obtain state approval or a license to engage in lending in conflict with the OCC's exclusive visitorial powers over national banks. *Id.* at 28596.

A similar request made to the Federal Deposit Insurance Corporation ("FDIC") on behalf of state-chartered banks and industrial loan companies based on section 27 of the Federal Deposit Insurance Act had a different result. *See* Does Section 27 of the Federal Deposit Insurance Act Preempt the Michigan Motor Vehicle Sales Finance Act, FDIC-02-06 (Dec. 19, 2002), *available at* 2002 WL 32361502. The FDIC concluded that the MVSFA, as interpreted and applied by the Bureau, is not preempted by section 27, except to the extent that out-of-state federally insured state banks making loans to Michigan residents through Michigan agents would be required to comply, either directly or through their Michigan agents, with the Michigan interest limitations and remedies contained in the MVSFA. *See id.*

5. *See* State Farm Bank, F.S.B. v. Burke, 445 F. Supp. 2d 207, 210 (D. Conn. 2006).
6. *Id.* at 211.
7. *Id.*
8. *Id.*
9. *See* Watters v. Wachovia Bank, N.A., 1275 S. Ct. 1559, 1565 (2007).
10. *Burke*, 445 F. Supp. 2d at 212.

OTS Interpretive Letter

In October 2004, the OTS issued an interpretive letter concluding that state licensing and registration requirements that do not apply to a federal savings bank also do not apply to qualifying agents where the agents perform marketing, solicitation, and customer service activities related to the bank's deposit and loan products and services and other authorized banking powers.[11]

In its interpretive letter, the OTS stated that it is beyond question that federal savings associations are authorized to contract with third parties to perform a variety of authorized activities for the bank.[12] The OTS opined that the state licensing and registration requirements under consideration interfered (and conflicted) with the authority of State Farm Bank to exercise its deposit and lending powers by limiting the federal savings bank's ability to market its products and services in the manner it desired, including through qualifying agents.[13] The OTS further opined that the state requirements thwart the congressional objective that the OTS exercise exclusive responsibility for regulating the operations of federal savings associations while "giving primary consideration of the best practices of thrift institutions in the United States."[14] Thus, to the extent that a state law purports to regulate the way in which a federal savings bank can perform its authorized activities, the OTS stated that the state law is an impermissible interference with bank powers and the OTS' regulatory authority.[15]

In the interpretive letter, the OTS also set forth certain requirements that an agency arrangement must satisfy for agents to rely on the savings bank's "preemption authority" to avoid state licensing requirements. Specifically, the OTS stated that the savings bank must submit, to its appropriate OTS regional office, a business plan or proposal that provides in-depth information about how the arrangement with the agents will be structured and carried out for approval by the OTS.[16] In addition, the OTS stated that a federal savings bank must comply, at a minimum, with the conditions set forth in Appendix A to the interpretive letter in connection with any agency arrangement, including (i) entering into detailed written agreements with agents; (ii) providing in-depth training to agents; and (iii) adopting detailed compliance programs to ensure adequate supervision and control over agents.[17] The OTS indicates in the interpretive letter that such agents are subject to direct supervision by the OTS.[18]

11. Authority of Federal Savings Association to Perform Banking Activities Through Agents Without Regard to State Licensing Requirements, OTS P-2004-7, at 1 (Oct. 25, 2004), *available at* http://files.ots.treas.gov//560404.pdf.
12. *Id.* at 10.
13. *Id.* at 12.
14. *Id.* (quoting 12 U.S.C. § 1464(a) (2006)).
15. *Id.*
16. *Id.* at 16.
17. *Id.*
18. *Id.*

Following receipt of the OTS interpretive letter, State Farm Bank selected three jurisdictions to test the validity of the OTS analysis: Connecticut, Ohio, and the District of Columbia.[19]

Connecticut Litigation

State Farm Bank and one of its agents brought an action for declaratory and injunctive relief against the Commissioner of the State of Connecticut ("Commissioner"). Relying on the OTS interpretive letter, State Farm Bank and its agent argued that federal law preempted the application of the Connecticut licensing statute to State Farm Bank agents.[20]

The U.S. District Court for the District of Connecticut granted State Farm Bank's request and permanently enjoined the Commissioner from directly or indirectly regulating the mortgage lending or deposit-related activities of State Farm Bank or any exclusive agents of State Farm Bank.[21] Further, the court enjoined the Commissioner from requiring that exclusive agents of State Farm Bank be state-licensed in order to sell mortgage-related products or registered with the Commissioner to sell certificates of deposit.[22]

The court found that because the OTS' interpretation of the preemptive effect of its regulations, as articulated in its interpretive letter, was neither plainly erroneous nor inconsistent with the underlying regulations, the interpretation was entitled to "controlling weight."[23]

Ohio Litigation

The Superintendent of the Ohio Division of Financial Institutions ("Ohio Division") asserted that Ohio law regarding the licensing of mortgage brokers was not preempted as applied to exclusive agents of State Farm Bank and would be enforced.[24] State Farm Bank responded by bringing an action in the U.S. District Court for the Southern District of Ohio in March 2005, seeking declaratory and injunctive relief.[25]

The Ohio federal district court disagreed with the OTS and the federal district court in Connecticut and granted the Ohio Division's motion for summary judgment.[26] In *Reardon*, the Ohio federal district court examined the statutes and regulations that preempted state laws relating to federal savings associations and concluded that they do not preempt any state laws for exclusive agents of federal

19. State Farm Bank filed an action in the District of Columbia but the suit has not proceeded. *See* State Farm Bank, F.S.B. v. Williams, No. 1:05-cv-000611-EGS (D.D.C. filed Mar. 24, 2005).
20. State Farm Bank, F.S.B. v. Burke, 445 F. Supp. 2d 207, 210 (D. Conn. 2006).
21. *Id.* at 210.
22. *Id.*
23. *Id.* at 216.
24. State Farm Bank, F.S.B. v. Reardon, 512 F. Supp. 2d 1107, 1114 (S.D. Ohio 2007).
25. *Id.*
26. *Id.* at 1129.

savings associations.[27] Accordingly, the court determined that independent mortgage brokers soliciting loans for a federal savings bank must obtain a license as required by Ohio law.[28] In addition, the *Reardon* court held that the OTS letter stating that exclusive agents of federal savings associations need not comply with state law licensing requirements violated the Administrative Procedures Act because the letter announced a substantive rule, as distinct from merely clarifying existing law.[29]

The Sixth Circuit Appeal

State Farm appealed, and the U.S. Court of Appeals for the Sixth Circuit reversed the lower court's decision, holding that preemption under the Home Owners' Loan Act ("HOLA")[30] and the OTS's implementing regulations applied to exclusive agents of federal savings associations.[31] The Sixth Circuit did not analyze the issues in the same way as the district courts in Connecticut and Ohio. The district courts asked whether the OTS interpretation letter was properly issued and entitled to deference by the courts.[32] The Sixth Circuit called this a "circuitous route to answering the ultimate question—a route that includes a detour through the muddied waters of administrative procedure and standards of judicial deference."[33] The appellate court decided it could avoid this detour because "reviewing the applicable statutory and regulatory provisions *de novo* leads this court to the conclusion that preemption is appropriate here."[34]

The Sixth Circuit reasoned that application of the state licensing regulations to a federal savings bank's exclusive agents is expressly preempted by OTS regulation.[35] The court held that the OTS' reference in 12 C.F.R. § 560.2 to the preemption of state laws "affecting the operations" of federal savings associations applied to State Farm Bank's use of exclusive agents.[36]

In addition, the Sixth Circuit held that requiring a federal savings bank's exclusive agents to comply with state licensing regulations would be inconsistent with congressional intent[37] that the powers of federal savings associations not be

27. *Id.* at 1119–23.
28. *Id.*
29. *Id.*
30. Home Owners' Loan Act, ch. 64, 48 Stat. 128 (1933) (codified as amended at 12 U.S.C. §§ 1461–1470 (2006)).
31. State Farm Bank, F.S.B. v. Reardon, 539 F.3d 336, 338 (6th Cir. 2008).
32. *See* State Farm Bank, F.S.B. v. Burke, 445 F. Supp. 2d 207, 210 (D. Conn. 2006); *Reardon*, 512 F. Supp. at 1123.
33. *Reardon*, 539 F.3d at 341.
34. *Id.*
35. *Id.* at 346–49. *See also* 12 C.F.R. § 560.2 (2008).
36. *Reardon*, 539 F.3d at 341–43.
37. Interestingly, the Sixth Circuit recognized that when a state passes a law to comply with the licensing and registration provisions of the Housing and Economic Recovery Act of 2008, a federal savings bank's exclusive agents may become subject to state regulation through the specific application of federal law. *Id.* at 338 n.1.

restricted by state law.[38] Noting that federal savings associations are allowed by statute to have third parties perform bank-authorized services subject to regulation by the OTS, the Sixth Circuit stated, "It is somewhat difficult for us to comprehend how a law that requires State Farm Bank to either forgo mortgage lending in Ohio or radically alter its business model does not 'prevent or significantly interfere' with the ability of a federal savings association to exercise its powers free from state obstruction."[39] The Sixth Circuit further recognized that "[s]ubjecting State Farm Bank and its exclusive agents to such a veritable 'hodgepodge' of state regulation would not only be unduly burdensome, it would also be at odds with the very purpose behind federal regulation of federal savings associations."[40]

RALs and Agents

In the context of refund anticipation loans ("RALs"),[41] one court found that state law restrictions on agents that indirectly restrict national banks or their operating subsidiaries are preempted. The U.S. District Court for the District of New Jersey found that state law civil and criminal usury restrictions on RALs are preempted by the National Bank Act ("NBA"), including certain provisions applicable to a bank's third-party agents.[42]

This case involved RALs offered by Pacific Capital Bank, a national bank, to consumers in New Jersey.[43] The bank did not maintain any branches in New Jersey, and the RALS were facilitated through tax preparation businesses.[44] The New Jersey RAL statute provides a maximum permissible interest rate for RALs by requiring that all tax preparers who offer, facilitate, or make RALs comply with the provisions of the New Jersey Licensed Lenders Act ("the Lenders Act").[45] The Lenders Act provides that charges on loans to individual consumers may not exceed a 30 percent annual percentage rate and subjects lenders who violate the provision to criminal charges.[46] In addition to criminal charges, the RAL statute imposes civil penalties of up to $1,000 for each RAL that violates its terms.[47] Because of the RAL statute's broad definitions, both the bank and third-party tax preparers are subject to the statute's restrictions on RALs, including civil penalties and criminal charges.[48]

38. *Id.* at 341.
39. *Id.* at 348.
40. *Id.*
41. RALs are loans secured by, and repaid directly from, the proceeds of a consumer's federal income tax refund from the Internal Revenue Service.
42. Pac. Capital Bank, N.A. v. Milgram, C.A. No. 08-0223, 2008 WL 700180, at *6–8 (D.N.J. Mar. 13, 2008).
43. *Id.* at *2.
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*

The court held that the provisions of New Jersey law that impose limitations on RAL interest rates are preempted by the NBA and therefore invalid.[49] The court held that preemption extends to RALs made by a national bank and facilitated by third-party tax preparers on the bank's behalf.[50] The court determined that it is within the bank's powers under the NBA to engage the assistance of third-party tax preparers and that the criminal provisions, as applied to third-party tax preparers, significantly interfere with the bank's ability to exercise congressionally granted powers.[51]

Therefore, the court held that the statute criminalizing the actions of third-party tax preparers, who are the bank's main partners in making RALs, stood as an obstacle to allowing the bank to charge the interest rates permitted under the NBA.[52] Accordingly, the court held that the New Jersey RAL statute imposing civil and criminal penalties under the Lenders Act was preempted by the NBA as to a national bank and third-party tax preparers.[53] The court stated that, while it appreciated the state's concerns for consumers who are subjected to high interest RALs, relief lies with Congress and not with the courts.[54]

Gift Cards and Agents

In another case involving a bank agent, the U.S. Court of Appeals for the Second Circuit held that certain state restrictions on charging administrative fees in connection with stored-value cards were not preempted with regard to SPGGC, LLC, a mall owner selling bank-issued gift cards, but remanded the case to the district court with instructions to develop additional facts with respect to the potential preemption of a state law prohibition on expiration dates.[55]

SPGGC sold prepaid Visa-branded gift cards issued by Bank of America, N.A. ("BoA").[56] Pursuant to BoA's relationship with SPGGC, the gift cards and cardholder agreements identified BoA as the issuer.[57] BoA retained review and approval authority over all terms and conditions for the gift cards, as well as card design.[58] The court noted that although BoA was the issuer of the gift cards, SPGGC bore the costs of administering the program and also collected and retained maintenance and other fees associated with the cards.[59] According to the court, BoA was compensated exclusively through Visa interchange fees generated on a per-

49. *Id.* at *6.
50. *Id.* at *8.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at *9.
55. SPGGC, LLC v. Blumenthal, 505 F.3d 183, 190–92 (2d Cir. 2007).
56. *Id.* at 186.
57. *Id.* at 187.
58. *Id.*
59. *Id.* at 191.

transaction basis.[60] Additionally, the court noted that while BoA had review and approval authority over any terms and conditions the gift cards carried, SPGGC had the authority to establish such terms or conditions in the first instance.[61]

Connecticut's gift card law prohibits the sale of any "gift certificate" subject to inactivity or dormancy fees or to an expiration date.[62] Gift certificates are defined to include gift cards and other stored-value cards.[63] SPGGC claimed that federal law preempted the Connecticut gift card law, even as applied to SPGCC, in connection with gift cards issued by national banks like BoA.[64]

SPGGC is neither a national bank nor the operating subsidiary of a national bank; nonetheless, SPGGC contended that because of its association with BoA, it was not subject to the Connecticut gift card law.[65] Relying on the U.S. Supreme Court's 2007 decision in *Watters v. Wachovia Bank, N.A.*,[66] SPGGC argued that the gift card should be subject to the OCC's exclusive supervision.[67]

The Second Circuit concluded that SPGGC failed to state a valid claim for preemption of the Connecticut gift card law insofar as the statute prohibited SPGGC from imposing inactivity and certain other fees on consumers of the Simon gift card.[68] The court determined that the Connecticut Attorney General's enforcement of the fee restrictions did not interfere with BoA's ability to exercise its powers under the NBA and OCC regulations; rather, it affected only the conduct of SPGGC, which federal law does not insulate from state supervision or regulation, and which is not subject to the OCC's exclusive oversight.[69] The court said that it was not addressing whether it would have reached a different conclusion if the fees in question had been established and collected by BoA rather than by SPGGC.[70]

The court allowed SPGGC's other claim, that the Connecticut gift card law's prohibition on expiration dates was preempted, to proceed.[71] Unlike the various administrative and maintenance fees associated with Simon gift cards, SPGGC alleged in its complaint that an expiration date is necessary "to implement Visa fraud prevention and card maintenance requirements applicable to all prepaid cards bearing the VISA logo."[72] The court concluded that if this allegation were true, then an outright prohibition on expiration dates could prevent a Visa member bank (such as BoA) from acting as the issuer of the gift

60. *Id.*
61. *Id.*
62. *Id.* at 187.
63. *Id.*
64. *Id.*
65. *Id.* at 189.
66. *See supra* note 3 and accompanying text.
67. *Blumenthal*, 505 F.3d at 189.
68. *Id.* at 191.
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*

cards.[73] Accordingly, the court vacated the district court's judgment on this issue and remanded the case with instructions to develop a factual record concerning (i) the precise nature of Visa's requirements and (ii) BoA's involvement in setting the expiration date for the gift card.[74]

In a similar case involving stored-value cards sold through the same agent but by a different bank, the U.S. Court of Appeals for the First Circuit, citing *Watters*, affirmed a grant of summary judgment in favor of SPGGC against the Attorney General of New Hampshire.[75] In *SPGGC, LLC v. Ayotte*, the New Hampshire law was not concerned with SPGGC's activity, which was limited to how and where the gift cards were marketed, but rather with the sale of gift cards by a national bank through a third-party agent.[76] As the state law would have significantly interfered with the issuing bank's statutory power, the court found that the law was preempted.[77]

These cases illustrate the importance of the facts and the contractual arrangement between the parties in determining the outcome of a federal preemption challenge.

Non-Preempted Claims

As the scope of federal preemption has become more defined, plaintiffs have sometimes succeeded in avoiding preemption challenges by basing claims on unfair and deceptive trade practices, misrepresentation, and similar theories.

For example, the U.S. District Court for the Southern District of West Virginia held that federal law did not preempt a borrower's claim of fraudulent inducement.[78] The claim in *Watkins v. Wells Fargo Home Mortgage* was based on allegations that the bank "engaged in a joint venture with an appraiser to over-appraise the value of Plaintiff's home and thereby induce her into accepting a loan."[79] The court explained that, unlike the underwriting and origination of loans, the activities of the alleged "joint venture, methods of appraisal, and the inducement to contract are not core businesses of national banks."[80] The court concluded that federal law did not preempt the fraudulent inducement claim.[81] However, the court held that federal law did preempt the borrower's claims of unconscionability, as those claims related to the loan-to-value ratio, the terms of credit and feës, and the origination of the loans.[82] The court concluded that those claims related

73. *Id.*
74. *Id.* at 192.
75. 488 F.3d 525, 536 (1st Cir. 2007).
76. *Id.* at 533. See Tomkies, Wutscher & Anstaett, *supra* note 3, at 709–10, for a discussion of this case.
77. *Ayotte*, 488 F.3d at 533.
78. Watkins v. Wells Fargo Home Mortgage, No. 3:08-0132, 2008 WL 2490306, at *4 (S.D. W. Va. June 19, 2008).
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.* at 3–4.

to the national bank's real estate lending practices, which are regulated exclusively by the OCC.[83]

In another case, the U.S. District Court for the Central District of California held that federal law did not preempt claims that a federal savings bank violated California's Unfair Competition Law by promising a lower interest rate than was delivered, misrepresenting loan terms, and breaching the loan agreement.[84] The court determined that the plaintiffs based their claim for relief on the generally applicable duties of any contracting party not to misrepresent material facts and to refrain from unfair and deceptive business practices.[85]

Similarly, the U.S. District Court for the Northern District of California held that federal law did not preempt state law misrepresentation claims against Chase Home Finance ("Chase"), an operating subsidiary of a national bank.[86] The borrowers claimed that Chase violated California law "by making representations (i) in each monthly loan statement coupon that '[u]ndesignated funds first pay outstanding late charges and fees then principal'; (ii) in the Deed about the application of payments; and (iii)... through customer service representatives about how prepayments would be credited."[87] Chase asserted that the NBA and OCC regulations at 12 C.F.R. §§ 7.4009 and 34.4(a) preempted the plaintiffs' state law claims.[88]

Relying upon the U.S. Court of Appeals for the Ninth Circuit's decision in *Silvas v. E*Trade Mortgage Corp.*,[89] the U.S. District Court for the Eastern District of California held that HOLA and the OTS' implementing regulations preempted certain putative class claims brought under state consumer fraud statutes against a federal savings bank.[90] Specifically, the court granted the defendant federal savings bank's motion to dismiss the borrower's credit and disclosure-related claims for supposed violation of the state consumer fraud and "unconscionable loan" statutes, which were predicated on alleged violations of the Truth in Lending Act and on alleged unfair or fraudulent business acts or practices.[91] The court held that HOLA preempted the claims.[92] However, the court denied the defendants' motion to dismiss with respect to the borrower's breach of contract and breach of implied covenant of good faith and fair dealing claims, holding that federal law does not preempt those claims because they "will not alter [the defendants'] lending practices, but only their practice of performing contracts."[93]

83. *Id.*
84. Reyes v. Downey Sav. & Loan Ass'n, F.A., 541 F. Supp. 2d 1108, 1111–12 (C.D. Cal. 2008).
85. *Id.* at 1115.
86. Jefferson v. Chase Home Fin., No. C 06-6510 TEH, 2008 WL 1883484, at *15 (N.D. Cal. Apr. 29, 2008).
87. *Id.*
88. *Id.* at *10 (citing 12 C.F.R. §§ 7.4009, 34.4(a) (2008)).
89. 514 F.3d 1001, 1004 (9th Cir. 2008).
90. Nava v. VirtualBank, No. 2:08-CV-00069-FCD-KJM, 2008 WL 2873406, at *8 (E.D. Cal. July 16, 2008).
91. *Id.* at *12.
92. *Id.* at *5–8.
93. *Id.* at *9.

Conclusion

The cases discussed here illustrate that, although federal law broadly preempts state laws for national banks and federal savings associations, third-party agents of these institutions cannot assume that they will enjoy the same broad benefits of preemption. When determining whether federal law preempts a state law claim against an agent of a federally chartered institution, a court will examine the specific relationship between the bank and the third party and consider factors such as the level of institutional control, which entity receives the financial benefit, and the federal powers being exercised by the federally chartered bank. Banks are also likely to face more challenges under general state laws such as unfair and deceptive trade practice laws, as courts define the limits of federal preemption analysis in regard to state law claims.