



Office of the Secretary

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

May 12, 2005

Mr. Albert J. Gladner
Senior Vice President and General Counsel
Flagstar Bank
5151 Corporate Drive
Troy, Michigan 48098-2639

Dear Mr. Gladner:

This letter responds to the petition you submitted on behalf of Flagstar Bank to the Federal Trade Commission (“Commission”) for a determination, under 15 U.S.C. § 6807 of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809 (“GLBA”), as to whether sections 22575, 22576, and 22577 of the California Business and Professional Code (enacted as part of the California Online Privacy Protection Act of 2003), afford “greater protection” than is provided under Subtitle A of Title V of the GLBA. Your petition was also submitted to the Office of Thrift Supervision.¹

In the Commission’s previous responses to petitions for preemption determinations, the Commission found that, absent an inconsistency under § 6807(a) between the state law(s) and the privacy provisions of GLBA,² there was no need to reach the “greater protection” analysis set

¹ The Commission consulted with the staff of the Office of Thrift Supervision in preparing the response to your petition.

² An inconsistency warranting preemption, or “conflict preemption,” may be found where the state law frustrates the purpose of the federal statutory scheme or where compliance with both the state and federal laws is physically impossible. *See, e.g., Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-73 (2000). For the purpose of these GLBA determinations, the analysis as to whether the federal purpose is frustrated is confined to GLBA’s privacy purpose to require financial institutions to respect the privacy of customers and protect the security and confidentiality of their nonpublic personal information. 15 U.S.C. § 6801(a). However, the GLBA may seek to effect other policies or purposes not considered in these determinations.

forth in § 6807(b).³ Consistent with that analytical framework, the Commission finds that the petition has not revealed an inconsistency under § 6807(a), and that therefore there is no need to perform a “greater protection” analysis here.

By direction of the Commission.

C. Landis Plummer,
Acting Secretary

³ See June 28, 2001 letter to Commissioner Gary D. Prezler (North Dakota Department of Banking and Financial Institutions), <http://www.ftc.gov/os/2001/06/northdakotaletter.htm>; June 7, 2002, letter to Commissioner John P. Burke (Connecticut Department of Banking), <http://www.ftc.gov/privacy/glbact/conn020607.htm>; August 25, 2004, letter to Commissioner D. Lorenzo Padron (Illinois Office of Banks and Real Estate) <http://www.ftc.gov/os/2004/09/040903letterglbpadron.pdf>; August 25, 2004, letter to Commissioner John P. Crowley (Vermont Department of Banking, Insurance, Securities, and Health Care Administration) <http://www.ftc.gov/os/2004/09/040903letterglbcrowley.pdf>. These determinations were limited to the relationship between Title V, Subtitle A of the GLBA and state law and were not intended to affect or construe the relationship between any other federal law and state law.