Claims primarily challenging deceptive conduct have withstood preemption challenges. However, state laws that impose notice or disclosure requirements beyond those required by federal law may be preempted. A court held that the National Bank Act preempts a state law that arguably required banks to produce signed receipts for all credit card purchases. The court concluded that this requirement substantially interfered with the bank’s exercise of its lending powers, as many consumers make purchases by phone or internet without signing anything.

Courts have found that state laws regulating debt collection issues arising out of bank accounts do not conflict with banks’ deposit-taking powers. This is consistent with OCC regulations that preserve debt collection as an area of general state law that is generally not preempted if it does not prevent or significantly interfere with the bank’s powers under the Barnett Bank standard.

Discrimination claims are also not preempted.

Footnotes

244 [233] See Gutierrez v. Wells Fargo Bank, 704 F.3d 712 (9th Cir. 2012) (National Bank Act preempts claim that bank’s practice of processing transactions from high to low to increase overdraft fees was unfair, but not plaintiff’s claim that disclosures and representations were deceptive); Larin v. Bank of Am., 475 Fed. Appx. 121 (9th Cir. 2012) (claims under state law that bank affirmatively misrepresented value of its overdraft program not preempted); Lombino v. Bank of Am., N.C., 797 F. Supp. 2d (D. Nev. 2011) (state tort claims based on misrepresentation by bank that check had cleared not preempted); Kriegal v. Bank of Am., 2010 WL 3169579 (D. Mass. Aug. 10, 2010) (state laws that prohibit deceptive or fraudulent statements, as applied to certificates of deposit, do not conflict with federal banking regulations or TISA); Mwantembe v. TD Bank, 669 F. Supp. 2d 545 (E.D. Pa. 2009) (failure to disclose inactivity and dormancy fees on gift cards); Mann v. TD Bank, N.A., 2009 WL 3818128 (D.N.J. Nov. 12, 2009) (challenge to gift card advertising campaigns boasting that cards had “no fees” or were “free,” when there were dormancy and replacement fees). See generally National Consumer Law Center, Mortgage Lending §§ 5.8.4.3 [1], 5.8.4.10 [2] (3d ed. 2019), updated at www.nclc.org/library; National Consumer Law Center, Consumer Credit Regulation § 3.2.4.12.3 [3] (2d ed. 2015), updated at www.nclc.org/library.

245 [234] See, e.g., Robinson v. Bank of Am., 2011 WL 5870541 (C.D. Cal. Oct. 19, 2011) (federal law preempts claim that bank should have disclosed that fee on a payroll card could be avoided by withdrawing cash at teller window), aff’d, 525 Fed. Appx. 580 (9th Cir. 2013). See generally § 1.5.10.3 [4], supra.


