

# Help American Homeowners Keep Money in Their Pockets: *The Hidden Cost of Federal Preemption*



On Dec. 23, 2025, the Office of the Comptroller of the Currency (OCC) issued a proposed determination to preempt laws in 12 states that require mortgage servicers to pay interest on consumer escrow accounts. If finalized, this would exempt national banks from paying interest to homeowners on funds held for taxes and insurance. The OCC provided only 30 days for interested stakeholders to comment, with a deadline of Jan. 29, 2026.



## Background: The Issue



- Escrow Basics:** Mortgage servicers collect funds from borrowers as part of their monthly mortgage payment to pay property taxes and insurance. Roughly 80% of mortgage holders have these accounts; they are typically mandatory for borrowers with less than 20% equity, which includes the vast majority of first-time homebuyers.<sup>1</sup>
- State Protections:** Approximately 50 years ago, states began enacting laws requiring banks to pay nominal interest on these funds. This was done to prevent "over-escrowing"—a practice where banks required borrowers to deposit excess funds to utilize as a source of interest-free funding.
- States That Would Be Preempted:** CA, CT, ME, MD, MA, MN, NY, OR, RI, UT, VT, WI.

## Impact On Constituents and Markets



### Direct Financial Harm to Homeowners

Preempting state interest-on-escrow laws is a direct benefit to national bank profitability at the expense of homeowners, and it creates disparate protections for consumers depending on the type of entity servicing their mortgage.

- Lost Income:** Borrowers in affected states will lose interest income on their own money held by a national bank.
- Inconsistent Treatment:** A constituent's right to interest would depend entirely on who services the loan. Mortgage servicing is frequently transferred. A borrower serviced by a state bank or a nonbank would receive interest; however, if the loan servicing is transferred to a national bank, the borrower would not.

### Competitive Disadvantage for Community Banks and Nonbank Servicers

The proposal creates a competitive disadvantage for state-chartered banks and nonbank servicers, who must continue to pay interest under state law. National banks would gain higher margins on servicing portfolios simply by avoiding these interest payments, undermining local community institutions.

<sup>1</sup> First-time home buyers & down payments | Rocket Mortgage

## Legal, Procedural, and Federalism Concerns



### Legal Deficit

- The National Bank Act (Section 25b) explicitly defines the bar for preemption of state consumer financial laws, requiring the OCC to support its findings with "substantial evidence."
- The OCC has provided no empirical data showing that paying nominal interest on escrow accounts—a practice banks have managed for decades—actually "prevents or significantly interferes" with the exercise of national bank powers. The proposal relies on theoretical assertions rather than the evidentiary standard required by Congress.

### Dangerous Precedent

- The OCC is using a novel strategy: creating a new federal rule codifying "flexibility" for national banks regarding interest and fees on mortgage escrow accounts and then using that rule to manufacture a conflict with state law.
- If allowed to stand, this creates a roadmap for the OCC to void any state consumer financial law simply by writing a vague regulation stating that banks need "flexibility" in that area.

### State Sovereignty and Federalism

- This proposal effectively strips states of their right to protect consumers and regulate business conduct within their own borders.
- By overriding state legislatures—the "laboratories of democracy"—without a direct statutory conflict, the OCC is undermining the dual banking system and disregarding local authority to protect consumers from abusive practices.

### Conflict with Judicial Rulings and Statute

- Supreme Court (*Cantero v. Bank of America, 2024*):** Recently vacated a ruling that blindly preempted these laws, requiring a stricter interference analysis.
- Circuit Courts (2025):** Both the 1st Circuit (*Conti v. Citizens*) and 9th Circuit (*Kivett v. Flagstar*) have recently ruled that state interest-on-escrow laws are not preempted by the National Bank Act, as they do not "significantly interfere" with banking powers.
- Dodd-Frank Act:** Dodd-Frank codified the "prevents or significantly interferes" standard for when state laws can be preempted by the OCC. The proposed preemption determination creates a new standard — inefficient, inflexible, or unusual — far short of what it means to significantly interfere with federal law.