The OCC Overreaches with State Escrow Preemption Proposals

PRESS RELEASES

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Washington, D.C. – The Office of the Comptroller of the Currency's (OCC's) proposals to preempt state interest-on-escrow laws exceed its authority, ignore legal precedent, and would benefit national banks at the expense of homeowners, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) said in a joint comment letter today, asking for the proposals to be withdrawn immediately.

The OCC's proposals would exempt national banks from paying interest to homeowners on funds held in mortgage escrow for taxes and insurance, preempting 12 state laws designed to discourage banks from inflating escrow-account balances as a source of interest-free funding. The 12 states in question – Calif., Conn., Maine, Md., Mass., Minn., N.Y., Ore., R.I., Utah, Vt., and Wis. – represent 30% of the nation's mortgages.

"No matter how hard they try, the OCC cannot regulate around Congress and the courts," said CSBS President and CEO Brandon Milhorn. "The OCC's interest-on-escrow regulatory proposals would erode 50 years of state law designed to protect consumers. These OCC proposals are not only bad law – falling well below the *Cantero* preemption standard – but they are also horrible policy. Taking money out of the pockets of homeowners and giving it to national banks is a callous response to the housing affordability crisis."

In addition to undermining housing affordability, the proposals would create a competitive disadvantage for state-chartered banks and nonbank mortgage servicers, which must continue to pay interest under applicable state consumer protection laws. Making matters worse, consumers do not get to choose who services their mortgage, resulting in the potential loss of hundreds or thousands of dollars based solely on the fact that a national bank services the consumer's loan.

The OCC proposals also fail to meet the requirements set by Congress and the U.S. courts governing preemption of state consumer protection laws. More concerning, the OCC seeks to erode the statutory preemption standard by regulation – manufacturing a conflict with state law and then asserting, without authority, that any state consumer protection law is void simply because it might impose an "unnecessary burden" on national banks. This "unnecessary burden" standard – pronounced unilaterally by the OCC – falls well below the "prevents or significantly interferes" preemption standard actually embodied in the National Bank Act, reaffirmed in *Cantero*, and applied by multiple courts to find that interest-on-escrow laws cannot be preempted.

For more information, view the OCC Preemption Backgrounder.

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The Conference of State Bank Supervisors (CSBS) is the national organization of financial regulators from all 50 states, American Samoa, District of Columbia, Guam, Puerto Rico, and U.S. Virgin Islands. State regulators supervise 79% of all U.S. banks and a variety of non-depository financial services. CSBS, on behalf of state regulators, also operates the Nationwide Multistate Licensing System to license and register non-depository financial service providers in the mortgage, money services businesses, consumer finance, and debt industries.

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