Appeals Court Errs in Interest on Escrow Decision

PRESS RELEASES

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May 6, 2026
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Washington, D.C. – Yesterday, the U.S. Court of Appeals for the Second Circuit ruled that New York's law requiring interest payments on mortgage escrow accounts does not apply to national banks because it is preempted by the National Bank Act. This decision ignores the high bar for preemption established by the U.S. Supreme Court in Cantero, by Congress, and by other federal courts.

The 2-1 panel decision of the Second Circuit is in direct conflict with the decisions of the First Circuit and Ninth Circuit, which each found that state laws requiring banks to pay interest on mortgage escrow accounts do not significantly interfere with the powers of a national bank.

The Conference of State Supervisors agrees with the dissent by U.S. Circuit Judge Myrna Perez, who said "[t]he majority opinion ignores the nature of the federal banking power at issue and recharacterizes the relevant power as broadly as possible to manufacture a direct conflict with state interest-on-escrow laws." Judge Perez went on to say, "By reframing the federal grant of power as enabling national banks to exercise discretion and flexibility, suddenly almost every state law that imposes any restriction on national banks at all necessarily conflicts with the federal grant of power so conceived, risking preemption."

Statement by CSBS President and CEO Brandon Milhorn

"We are disappointed in the Second Circuit decision, which is inconsistent with the direction of Congress, the U.S. Supreme Court, and other federal courts that have analyzed the issue. Contrary to the Supreme Court's explicit direction, the Second Circuit has once again articulated a blanket preemption standard that essentially no state consumer protection laws would survive. The Second Circuit should correct this erroneous decision en banc. Should the Second Circuit not address this flawed decision, we call on the Supreme Court to address the circuit split by reinforcing the high bar set in its Cantero decision."

Read CSBS statements and comments on interest-on-escrow laws:

- CSBS Supports Ninth Circuit Decision Upholding State Interest-on-Escrow Laws
- The OCC Overreaches with State Escrow Preemption Proposals
- CSBS Statement on Cantero v. Bank of America

Contact: Susanna Barnett, 202-407-7156, sbarnett@csbs.org

X: @CSBSNews

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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