OCC’s Final Rules Preempting State Interest on Escrow Laws Are Unlawful

PRESS RELEASES

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May 15, 2026
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Washington, D.C. – The Conference of State Bank Supervisors (CSBS) opposes the Office of the Comptroller of the Currency’s (OCC) decision today to broadly preempt state laws requiring payment of a modest amount of interest on homeowner funds held in mortgage escrow accounts.

Statement by CSBS President and CEO Brandon Milhorn:

“These OCC rules are inconsistent with the National Bank Act and should be quickly and decisively invalidated by the courts. They brazenly ignore the process and standard for preempting state consumer financial laws, and courts should apply a rigorous independent evaluation. The rules are entitled to no deference.”

In finalizing these rules, the OCC attempts to revive a sweeping, watered-down theory of preemption that the U.S. Supreme Court explicitly rejected in Cantero v. Bank of America, N.A. After Cantero, the First and Ninth Circuits upheld state laws requiring mortgage servicers — including banks — to pay interest on homeowners’ escrow funds. Only a divided Second Circuit has disagreed, and the dissent by U.S. Circuit Judge Myrna Pérez points out the clear flaw in the majority’s opinion — a preemption standard that would invalidate nearly any state consumer financial law. Should the Second Circuit choose not to address this inaccurate decision en banc, the Supreme Court should resolve the circuit split by reinforcing the high bar set in its Cantero decision.

The OCC’s attempt to lower the preemption standard benefits national banks at the expense of consumers. In contravention of Administrative Procedure Act requirements, the final rules also neglect to address the concerns raised by the majority of stakeholders who overwhelmingly opposed the proposal in numerous comment letters.

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

- Appeals Court Errs in Interest on Escrow Decision
- 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

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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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