

## OCC Preemption Decision and Final Rule Regarding Mortgage Escrow Account State Laws

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On May 15, 2026, the Office of the Comptroller of the Currency (OCC) [issued a preemption decision](#) addressing state laws that govern how mortgage escrow accounts are managed, as well as a final rule establishing a national bank's escrow powers (the [Escrow Powers Rule](#)). After more than a decade of preferring to allow preemption concerns to be battled out in court, the OCC has recently begun issuing preemption determinations again.

In the [announcement of the preemption decision and related rule](#), the OCC lauded the Second Circuit for its application of the methodology detailed in the Supreme Court's decision in *Bank of America v. Cantero* (which we wrote about [here](#)). The Court's May 5, 2026 [decision](#) in the remand of the *Cantero* case found that the relevant New York state law governing the payment of interest on mortgage escrow accounts was effectively preempted because the law: 1) affects the national banking power to offer mortgages; 2) targets banks and limits their broad powers in a manner similar to the Supreme Court decisions that preempted state laws including *Fidelity Federal Savings and Loan v. de la Cuesta* and *Barnett Bank v. Nelson*; and 3) interferes with banks' ability to make real-estate loans in a degree that is "similarly severe to the interference created by the preempted advertising law" in the Supreme Court's decision in *Franklin National Bank of Franklin Square v. New York*. Now that the OCC has rendered its preemption decisions, cases like *Cantero* may no longer show up in court. Although with [Chevron deference gone](#), there could still be some room for litigants to challenge preemption.

The preemption decision addresses state laws like the one involved in *Cantero* that require interest to be paid on mortgage escrow account balances. To this end, the OCC identified laws in twelve states that require interest to be paid on escrow account balances and declared those laws preempted under both the National Banking Act (preempting these laws for national banks), as well as the Home Owner's Loan Act (preempting these laws for federal savings associations). The twelve states are California, Connecticut, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Utah, Vermont, and Wisconsin. The laws of Guam and the U.S. Virgin Islands are also preempted.

Specifically, the OCC found that these state laws were contrary to the flexibility granted by Federal law to national banks, which sufficiently interferes with the bank's business judgment. As stated, "[t]he OCC's regulations have long made clear that national banks have broad discretion to determine the pricing of their products and services based on consideration of relevant factors, including costs, which supports their ability to effectively and efficiently exercise their Federally authorized powers." Further, "[r]equiring compliance with State interest-on-escrow laws would undermine this discretion and could cause national banks to, among other things, attempt to recoup or offset costs in other ways that are not as well aligned with their sound banking judgment or safe and sound banking principles and that may even increase mortgage pricing."

Meanwhile, the new Escrow Powers Rule provides clarity on how the OCC will evaluate whether a state law involving mortgage escrow accounts interferes with national bank powers. Escrow accounts are defined in the rule (which is an update to [12 CFR 34](#) and [12 CFR 160](#)) as accounts "established in connection with a loan or extension of credit secured by a lien on interest in real estate in which the borrower places funds for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property." By its terms, this means that the preemption analysis extends beyond escrow accounts tied to residential mortgages and applies also to escrow accounts tied to

other kinds of mortgages. Specifically, the rule establishes that banks may make “business decisions” in their discretion to establish the terms and conditions of escrow accounts, including investment of the escrowed funds, fees charged and the payment of interest on the balances.

The OCC’s two-step approach by finalizing the Escrow Powers Rule and then issuing the preemption decision appears to strengthen the OCC’s preemption position on preemption. By making clear that escrow accounts are clearly part of the business of banking applicable to national banks (and federal thrifts), it arguably helps solidify the preemption determination. Of some interest, the National Credit Union Administration (NCUA) appears ready to follow the OCC’s preemption determination. On May 18, the NCUA [filed](#) an interim final rule for review with the Office of Management and Budget’s Office of Information and Regulatory Affairs, putting federal credit unions on similar footing.