

Banking and Finance Law Daily Wrap Up, PREEMPTION—OCC proposes interest-on-escrow account codifications, state law preemptions, (Jan. 2, 2026)

Banking and Finance Law Daily Wrap Up

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By Jeff Williams

The agency said it wants to ensure that banks and federal savings associations have flexibility regarding how they handle interest-on-escrow accounts.

Saying that the actions “emphasize federal preemption as a critical tool for reducing unnecessary burden, enabling local and national prosperity, and unleashing economic growth,” the Office of the Comptroller of the Currency (OCC) has [issued](#) a pair of proposed rulemakings on the real estate powers of national banks and federal savings associations “related to the payment of interest on funds held in escrow accounts.” Comments regarding both proposals are due Jan. 29, 2026.

Real estate escrow accounts. The OCC is [proposing](#) to “codify longstanding powers” national banks and federal savings associations have to establish or maintain escrow accounts for real estate lending and “exercise flexibility in making business judgment” on the terms and conditions of such accounts, including regarding whether to offer any compensation paid to customers or assess fees.

“Codifying this longstanding power will provide clarity and reduce uncertainty with regards to bank escrow practices and may thereby incentivize increased bank real estate lending,” the OCC stated.

The “discretion” banks have to make decisions about compensation and fees on escrow accounts “allows them to appropriately balance the costs and benefits of these accounts and the risks and rewards of real estate lending more generally” and is a “core component of banks’ mortgage lending powers under applicable law, including provisions of the Federal Reserve Act, the Home Owners Loan Act of 1933 (HOLA), and the National Bank Act,” the agency said.

Specifically, the proposed rule [would](#), among other things, “amend the OCC’s real estate lending and appraisals regulations applicable to national banks and its lending and investment regulations applicable to Federal savings associations to add a definition of ‘escrow account,’ expressly codify banks’ power to establish and maintain escrow accounts, and to clarify that the terms and conditions of escrow accounts, including the extent of any compensation paid to customers, are business decisions to be made by each bank.”

The OCC is also proposing to “codify national banks’ escrow powers, including the flexibility such banks have as to how to organize and manage escrow accounts.”

Preemptions. The OCC has also requested comment on its [Notice of Proposed Rulemaking](#) to issue a [preemption determination](#) that “federal law preempts state laws that eliminate national banks’ and federal savings associations’ flexibility to decide whether and to what extent to (1) pay interest or other compensation on funds placed in real estate escrow accounts; or (2) assess fees in connection with such accounts.”

Specifically, the agency said, the proposed preemption would conclude that federal law preempts a New York interest-on-escrow law, as well as “laws with substantively equivalent terms” in 11 other states.

In the notice, the OCC said that “[g]iven that federal preemption has long been a critical feature of the dual banking system,” the OCC is “well positioned to support” efforts by the Justice Department and National Economic Council under the Trump administration to solicit public comment on state laws that “significantly and adversely affect the national economy or interstate economic activity and solutions to address such effects, including whether such state laws are preempted by existing federal law.”

The OCC also said that there has been “extensive” litigation regarding whether federal law preempts state interest-on-escrow laws and there “remains substantial uncertainty” because of conflicting court decisions. The preemption proposed in the OCC notice would “provide much needed clarity,” the agency said.

Regarding the New York law, the OCC pointed to previous court decisions that “New York’s interest-on-escrow law prevents or significantly interferes with a national bank’s exercise of federally authorized powers” and would conflict with the agency’s other proposed escrow account-related proposal.

Similarly, the OCC said, escrow account rules in California, Connecticut, Maine, Maryland, Massachusetts, Minnesota, Oregon, Rhode Island, Utah, Vermont, and Wisconsin “each have the same effect as New York’s interest-on-escrow law: they deprive national banks of the flexibility to exercise the discretion that federal law, as confirmed in the OCC’s regulation.”

RegulatoryActivity: BankingOperations InterestUsury Loans Mortgages Preemption