

OCC's Final Escrow-Interest Preemption Rules Bolster the Second Circuit's *Cantero* Decision

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On May 15, 2026, the Office of the Comptroller of the Currency (OCC) finalized a pair of [rules](#) that were initially proposed in December 2025, declaring that OCC-regulated banks may make their own “business decisions” about the terms of their mortgage escrow accounts—including whether to pay interest—and that state laws mandating escrow interest are preempted for those lenders.

The final rules, which were not materially changed from the initial proposals, come just 10 days after the Second Circuit issued its decision on remand in [Cantero v. Bank of America, N.A.](#), concluding that New York’s General Obligations Law § 5-601 is preempted by federal banking law. Together, these two developments mark a significant turning point in the ongoing debate over state escrow-interest requirements and the federal preemption doctrine.

What Do the OCC’s Two New Rules Entail?

The OCC’s rulemaking consists of two interlocking regulations.

1. The first expressly authorizes federally chartered banks to control the terms and conditions on their mortgage escrow accounts, including whether to pay interest and how much to charge in fees.
2. The second declares that state laws restricting a bank’s flexibility to set escrow-account interest and fees are preempted for OCC-regulated lenders—a group that includes most of the top 50 largest US commercial banks.

Notably, the second rule singles out specific escrow-related statutes in New York, California, and 10 other states, classifying them as preempted, with the final version adding laws from Guam and the US Virgin Islands to the list.

What Does the *Cantero* Ruling Mean?

The combined effect of the OCC's rules and the Second Circuit's *Cantero* decision creates a significantly strengthened preemption framework, particularly as it relates to state interest-on-escrow statutes.

The OCC itself stated that its final rules will work "in tandem" with the Second Circuit's decision to provide important clarity on federal preemption. This is not a coincidence. The Second Circuit's majority opinion repeatedly cited the OCC's December 2025 proposed rulemaking. Now that those proposed rules are final, they provide additional regulatory foundation for the judicial holding.

As reported in our [May 6 blog post](#) regarding *Cantero*, the Second Circuit's decision renewed a circuit split with the First and Ninth Circuits, both of which found that similar state interest-on-escrow statutes were not preempted, leaving banks facing class action lawsuits in Rhode Island and California.

The OCC's final rule adds a new dimension to the circuit split. The OCC's determination that these specific state statutes are preempted creates an independent regulatory basis for banks to assert a preemption defense. Yet another reason the issue is likely headed back to the US Supreme Court.

Hinshaw will continue to monitor preemption decisions and disagreements among the circuits, as well as any action pursued as a result of OCC's final rule.

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