DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket ID OCC-2025-0735]

RIN 1557-AF45

Preemption Determination: State Interest-on-Escrow Laws

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC is proposing to issue a preemption determination concluding that federal law preempts state laws that eliminate OCC-regulated banks' 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. This preemption determination would provide much needed clarity to banks and other stakeholders.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title "Preemption Determination: State Interest-on-Escrow Laws" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov:*

Go to *https://regulations.gov/*. Enter "Docket ID OCC-2025-0735" in the Search Box and click "Search." Public comments can be submitted via the "Comment" box below the displayed document information or by clicking on the document title and then clicking the "Comment" box on the top-left side of the screen. For help with submitting effective comments, please click on "Commenter's Checklist." For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday-Friday, 9 a.m.-5 p.m. EST, or e-mail *regulationshelpdesk@gsa.gov*.

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2025-0735" in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically – Regulations.gov:*

Go to *https://regulations.gov/*. Enter "Docket ID OCC-2025-0735" in the Search Box and click "Search." Click on the "Dockets" tab and then the document's title. After clicking the document's title, click the "Browse All Comments" tab. Comments can be viewed and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine

Comments Results" options on the left side of the screen. Supporting materials can be viewed by clicking on the "Browse Documents" tab. Click on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen checking the "Supporting & Related Material" checkbox. For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday-Friday, 9 a.m. – 5 p.m. ET, or e-mail *regulationshelpdesk@gsa.gov*.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Karen McSweeney, Special Counsel, Graham Bannon, Counsel, Priscilla Benner, Counsel, and Harry Naftalowitz, Attorney, 202-649-5490; Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The dual banking system, which is "made up of parallel federal and state banking systems" that "co-exist and compete," is foundational to the American financial system.[1] Congress designed this system to permit banks to choose the charter—state or federal—that best fits their business needs and allows them to best serve their customers. Federal preemption, which derives from the Supremacy Clause of the U.S. Constitution, has long been recognized as

[1] *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 209-10 (2024).

fundamental to the design of the dual banking system.[2] It removes barriers and creates efficiencies associated with operating under a uniform set of rules, which fosters the development of national products and services and multi-state markets. As such, federal preemption is a critical tool for reducing unnecessary burden, enabling local and national prosperity, and unleashing economic growth. Congress has consistently reaffirmed the important role that federal preemption plays in the dual banking system, including by codifying preemption standards for OCC-regulated banks as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)[3] and extending comparable federal preemption standards to state-chartered banks in some cases.[4]

In addition, the U.S. Department of Justice (DOJ) and the National Economic Council (NEC) recently recognized the benefits of preemption when they solicited 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.[5] This request for comment was not limited to banking but rather covered state laws that affect all parts of the American economy, consistent with the role that federal preemption plays in many other sectors, including energy and aviation.

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[2] When Congress enacted the National Bank Act over 150 years ago, it "intended to facilitate . . . a 'national banking system.'" *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 314-15 (1978) (quoting Cong. Globe, 38th Cong., 1st Sess., 1451 (1864)); *see also Easton v. Iowa*, 188 U.S. 220, 229 (1903) (observing that federal legislation and regulation "has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the [s]tates."); *id.* at 231 ("It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the [National Bank Act].").

[3] *See, e.g.*, 12 U.S.C. 25b.

[4] *See, e.g.*, 12 U.S.C. 1831a(j).

[5] *Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects in Interstate Commerce*, 90 Fed. Reg. 39,427 (August 15, 2025).

Given that federal preemption has long been a critical feature of the dual banking system, the OCC is well positioned to support the Administration's preemption efforts. For example, in response to the DOJ and NEC request for comment, banking industry commenters specifically highlighted state laws that eliminate banks' flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in escrow accounts (interest-on-escrow laws), observing that these laws could cause banks to increase mortgage prices or even reduce their mortgage lending.[6] State interest-on-escrow laws may also eliminate banks' flexibility to assess related fees. The question of whether federal law preempts state interest-on-escrow laws has been extensively litigated. However, while multiple circuits and even the Supreme Court have considered this issue,[7] there remains substantial uncertainty. Moreover, this litigation has introduced ambiguity regarding how to evaluate National Bank Act preemption generally.

To provide much needed clarity, the OCC is proposing to issue a preemption determination addressing state interest-on-escrow laws. Specifically, this preemption determination would conclude that (1) the National Bank Act[8] preempts New York's Gen. Oblig. Law section 5-601, the state's interest-on-escrow law; (2) eleven other states have laws with substantively equivalent terms; and (3) these substantively equivalent state laws are also preempted.[9] This proposed preemption determination would complement the OCC's notice of

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[6] *See, e.g.*, Comment from Bank Policy Institute, Sept. 15, 2025; Comment from American Bankers Association, Sept. 15, 2025.

[7] *See, e.g.*, *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185 (2018); *Cantero v. Bank of Am., N.A.*, 49 F.4th 121, 131 (2022), *vacated* by 602 U.S. 205 (2024); *Conti v. Citizens Bank, NA*, 157 F.4th 10, 17-18 (1st Cir. 2025); *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025).

[8] For purposes of this proposed preemption determination, references to the National Bank Act generally include 12 U.S.C. 371, which authorizes national banks to engage in real estate lending, although section 371 is part of the Federal Reserve Act.

[9] The analysis in this proposed preemption determination focuses on national bank powers and preemption of state interest-on-escrow laws by the National Bank Act. However, the Home Owners' Loan Act of 1933 ("HOLA") directs courts to apply "the laws and legal standards applicable to national banks" in determining whether federal

proposed rulemaking to codify national banks' longstanding escrow accounts power, which the agency is concurrently issuing.[10] As discussed below, if that concurrent rulemaking is finalized, state interest-on-escrow laws would directly conflict with the federal power addressed therein and would thus be preempted.

B. New York Interest-on-Escrow Law

New York's Gen. Oblig. Law section 5-601 requires "mortgage investing institutions" to pay "dividends or interest at a rate of not less than two per centum per year . . . or a rate prescribed by the [New York] superintendent of financial services" on escrow account balances. This statutory obligation applies whenever the institution "maintains an escrow account pursuant to any agreement executed in connection with a mortgage on any one to six family residence occupied by the owner or on any property owned by a cooperative apartment corporation" located in New York.[11] This New York law also requires the institution to credit the interest to the escrow account on a quarterly basis, and it generally prohibits the assessment of a service charge in connection with maintaining an escrow account.[12] Accordingly, this New York interest-on-escrow law purports to require national banks to pay a specific amount of interest on funds placed in an escrow account maintained in connection with a covered mortgage and to prohibit them from charging related fees except in limited circumstances.

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law preempts state regulation of Federal savings associations. 12 U.S.C. 1465(a). As such, the OCC's analysis is equally applicable to Federal savings associations and preemption by the HOLA.

[10] This proposed rule relating to real estate lending escrow accounts is published elsewhere in this issue of the *Federal Register*.

[11] New York's Gen. Oblig. Law 5-601.

[12] *Id.*

C. Standard for National Bank Act Preemption

The U.S. Constitution provides that federal law is the supreme law of the land and contrary state law is preempted.[13] In applying this principle, the Supreme Court has identified several ways in which federal law may preempt state law, including when there is a conflict.[14] In *Barnett Bank v. Nelson*, the Supreme Court clarified the standard for conflict preemption in the national banking context, holding that state law is preempted when it prevents or significantly interferes with a national bank's exercise of its federal powers.[15] The *Barnett* Court also stated that federal grants of authority in the national banking context are "not normally limited by, but rather ordinarily pre-empt[], contrary state law."[16]

In 2024, in *Cantero v. Bank of America*, the Supreme Court reaffirmed the *Barnett* standard and explained that its application must be based on "a practical assessment of the nature and degree of the interference caused by a state law."[17] This assessment may include consideration of *Barnett* and its antecedents and be based on "the text and structure of the laws, comparison to other precedents, and common sense."[18] In addition to *Barnett*, the *Cantero* Court specifically discussed six antecedent cases, noting that they "furnish content" regarding the *Barnett* standard for conflict preemption in the banking context.[19]

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[13] U.S. Const. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

[14] *Barnett Bank v. Nelson*, 517 U.S. 25 (1996).

[15] *Id.* at 33.

[16] *Id.* at 32. As this language in *Barnett* reflects, there is no presumption against preemption in the context of National Bank Act preemption. *See Bank of Am. v. City & Cnty. of San Francisco*, 309 F.3d 551, 558 (9th Cir. 2002), *as amended on denial of reh'g and reh'g en banc* (Dec. 20, 2002) (citations omitted).

[17] *Cantero*, 602 U.S. at 219.

[18] *Id.* at 219-21 and n.3.

[19] *Id.* at 219. The Court also stated that "courts addressing preemption questions in this context must do as *Barnett Bank* did and likewise take account of those prior decisions of this Court and similar precedents." *Id*. at 215-16.

In *Barnett*, the Supreme Court evaluated whether the National Bank Act preempted a Florida law that prohibited national banks from selling insurance. Federal law permitted, but did not require, national banks to sell insurance in small towns. Holding that this authority vested national banks with "a broad, not a limited" power and was "without relevant qualification," the Court concluded that the federal law preempted the state law.[20]

In *Fidelity Federal Savings & Loan Association v. de la Cuesta*, the Supreme Court considered a California law that limited when a Federal savings and loan association could exercise a due-on-sale clause. A federal regulation recognized the power of Federal savings and loans to include these clauses in mortgage contracts and specifically provided these institutions with the flexibility to decide when to exercise them. Finding that the state law limitations would interfere with this flexibility, which was critical to the federal scheme, the *Fidelity* Court concluded that the state law was preempted.[21]

In *Franklin National Bank of Franklin Square v. New York*, the Supreme Court considered a New York law that prohibited banks from using the word "saving" or its variants in advertising and business.[22] Federal law granted national banks the power to accept savings deposits and advertise this power. Because the state law interfered with national banks' ability to exercise these powers "effectively" and "efficiently," it was preempted.[23]

In *First National Bank of San Jose v. California*, the Supreme Court considered a California dormant account law that included an expedited process for escheating deposits to the

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[20] *Barnett Bank*, 517 U.S. at 25.

[21] 458 U.S. 141, 159 (1982).

[22] 347 U.S. 373 (1954)

[23] *Cantero*, 602 U.S. at 216 (discussing *Franklin*).

state. The Court found that the state law qualified national banks' deposit-taking authority in an "unusual" way. As such, the Court held that the state law was preempted.[24]

The Supreme Court has also recognized that when a state law does not prevent or significantly interfere with the national bank's exercise of its powers, it is not preempted.[25] For example, in *Anderson National Bank v. Luckett*, the Supreme Court contrasted California's dormant account law addressed in *San Jose* with a more conventional dormant account law in Kentucky. The Supreme Court found that the Kentucky law was not preempted, including because it applied a rule that was "old as the common law itself."[26] The *Anderson* Supreme Court noted that the state law addressed the transfer and devolution of property in the state,[27] a kind of generally applicable state 'infrastructure' law that is typically not preempted.[28]

In *McClellan v. Chipman*, the Supreme Court considered a Massachusetts law that prohibited certain transfers of property. The Court's decision recognized that national banks are subject to general state laws in their "dealings and contracts," unless those laws expressly conflict with federal law, frustrate the purpose of national banks, or impair their efficiency. Finding that the Massachusetts law was generally applicable and national banks were subject to no greater conditions and restrictions than other Massachusetts citizens, the *McClellan* Court held that the state law was not preempted.[29] Similarly, in *First National Bank v. Commonwealth of Kentucky*, the Supreme Court held that a Kentucky tax law was not preempted, noting that

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[24] 262 U.S. 366, 370 (1923).

[25] *Barnett*, 517 U.S. at 33-34 (internal citations omitted).

[26] 321 U.S. 233, 251-52 (1944).

[27] *Id.* at 248.

[28] *See* 12 CFR 7.4007(c)(5), 7.4008(e)(5), and 34.4(b)(6).

[29] 164 U.S. 357 (1896).

national banks are generally subject to state laws on contracts, the acquisition and transfer of property, and the right to collect and be sued for debts.[30]

While the Supreme Court precedent discussed above does "not purport to establish a clear line to demarcate" which state laws are and are not preempted by federal law, they offer a lens through which the standard comes into focus.[31] Specifically, these cases demonstrate that a state law prevents or significantly interferes with a federal power, at a minimum, when it interferes with critical flexibility granted to a national bank under federal law,[32] interferes with a national bank's efficiency and effectiveness in exercising its federal power, or qualifies a federal power in an unusual way. In contrast, as discussed above, generally applicable infrastructure laws typically apply to national banks.

D. 12 U.S.C. 25b and State Consumer Financial Laws

As part of Dodd-Frank, Congress addressed National Bank Act preemption, primarily with respect to "State consumer financial laws,"[33] such as state interest-on-escrow laws.[34] In

[30] *Commonwealth*, 76 U.S. 353 (1869). The Court also stated that the state law "in no manner hinder[ed]" the national bank and imposed "no greater interference with the functions of the bank than any other legal proceeding." *Id*. at 362-63.

[31] *Cantero*, 602 U.S. at 215.

[32] As the First Circuit recently observed, certain state laws, such as those that interfere with flexibility that federal law specifically grants to banks, can create an "obvious" or direct conflict that results in preemption. *Conti*, 157 F.4th at 17-18.

[33] A state consumer financial law is "a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer." 12 U.S.C. 25b(a)(2).

[34] *See Cantero*, 602 U.S. at 213 (noting that Dodd-Frank established the controlling preemption standard for state consumer financial laws "like New York's interest-on-escrow law").

particular, section 25b codified the *Barnett* standard,[35] expressly recognized the OCC's role in preemption, and established procedural requirements for OCC "preemption determinations."[36]

Specifically, Dodd-Frank provides that the OCC may issue a preemption determination by regulation or order on a case-by-case basis, which means that the determination may address the impact of (1) a particular state consumer financial law; and (2) the law of any other state with substantively equivalent terms. When making a determination that the law of another state has substantively equivalent terms, the OCC must first consult with the Consumer Financial Protection Bureau (CFPB) and take its views into account. In addition, Dodd-Frank requires that the preemption determination be supported by "substantial evidence, made on the record of the proceeding."[37]

II. Proposed Preemption Determination

A. Analysis of New York's Interest-on-Escrow Law

National banks "are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States."[38] At the center of this system is a federal framework for regulation and supervision that authorizes

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[35] This codification did not create a new standard but rather incorporated the conflict preemption standard reflected in *Barnett*. *Id.* at 214 n.2 ("Dodd-Frank adopted *Barnett Bank*, and . . . *Barnett Bank* was also the governing preemption standard before Dodd-Frank."). *See also* OCC Interpretive Letter 1173, December 18, 2020; *Office of Thrift Supervision Integration; Dodd-Frank Act Implementation*, 76 Fed. Reg. 43,549, 43,555 (July 21, 2011). Section 25b also includes two other preemption standards for State consumer financial laws – when the state law has a discriminatory effect and when it is preempted by other federal law (including 12 U.S.C. 371). 12 U.S.C. 25b(b)(1)(A) and (C).

[36] A "preemption determination" refers to an OCC regulation or order that concludes that a state consumer financial law is preempted in accordance with the *Barnett* standard under section 25b(b)(1)(B).

[37] Dodd-Frank also requires the OCC to (1) publish a list of preemption determinations then in effect at least quarterly; and (2) conduct periodic reviews of each determination that federal law preempts a state consumer financial law. Should the OCC decide to finalize this preemption determination, the OCC will comply with these requirements at the appropriate time. In addition, 12 U.S.C. 43 imposes procedural requirements on the OCC when it takes certain preemption actions, including requiring the OCC to provide notice of the issue in the *Federal Register* and give interested parties at least 30 days to submit written comments.

[38] *Davis v. Elmira Sav. Bank*, 161 U.S. 275, 283 (1896).

national banks to engage in the business of banking and ensures that they operate in a safe and sound manner, comply with applicable law, provide fair access to financial services, and treat customers fairly.[39]

Real estate lending has been core to the business of national banks for over 100 years. Congress has specifically authorized national banks to "make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to . . . such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order."[40] Frequently, national banks offer or require borrowers to establish escrow accounts when they make real estate loans. These escrow accounts serve a variety purposes, including protecting the priority of the bank's security interest in the property that collateralizes the loan and maintaining appropriate insurance on the property.[41] As such, they are a crucial risk mitigation tool that supports safe and sound lending.

The OCC is concurrently proposing a regulation to codify national bank's authority to establish and maintain escrow accounts and to clarify that the terms and conditions of any such escrow account, including the investment of escrowed funds, fees assessed for the use of such accounts, or whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account, are business decisions to be made by

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[39] Congress expressly charged the OCC with ensuring that these goals are met. 12 U.S.C. 1(a).

[40] 12 U.S.C. 371. Congress has progressively expanded national banks' real estate lending powers under section 371. Initially limited to loans on farm land (Pub. L. 63-43, ch. 6, § 24, 38 Stat. 251, 273 (Dec. 23, 1913)), Congress amended the law to include limited general real estate lending in 1916 (Pub. L. 64-270, ch. 461, 39 Stat. 752, 754 (Sept. 7, 1916)), and has through the years removed all limits and conditions on real estate lending (Pub. L. 97-320, Title IV, § 403(a), 96 Stat. 1469, 1510-11 (Oct. 15, 1982)), other than those prescribed in regulation by the Comptroller.

[41] *Cantero*, 602 U.S. at 210-11.

each national bank in its discretion.[42] As noted in the proposed rule, that regulation would codify authority that national banks already have under federal law. Even in the absence of that rule, national banks have the flexibility to make informed business decisions about how to effectively and efficiently set the terms and conditions of their escrow accounts.

Contrary to the flexibility granted by federal law as proposed to be codified by the OCC, New York's interest-on-escrow law dictates a minimum interest national banks must pay on funds held in escrow accounts and generally prohibits them from assessing related service charges, regardless of whether paying this interest or assessing such charges is consistent with the bank's business judgment. As such, the nature and degree of interference caused by the New York interest-on-escrow law is "more akin" to the interference identified in at least three of the antecedent cases where the Court found preemption: *Barnett*, *Franklin*, and *Fidelity*.[43]

Fidelity is particularly apt. In that case, a federal regulation provided each Federal savings and loan association with authority to exercise contractual due-on-sale clauses "at its option" and stated that the exercise of such option was "exclusively governed by the terms of the loan contract."[44] A California state law forbade a Federal savings and loan association from exercising due-on-sale clauses at its option and "deprived the lender of the 'flexibility'" given to

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[42] For purposes of soliciting public comments regarding the OCC's proposed preemption determination herein, the OCC assumes that its concurrently proposed rulemaking will be finalized as proposed. The OCC believes that issuing these two proposals concurrently provides the public with more complete information, which will improve its opportunity to comment. The OCC will revisit its preemption analysis discussed herein in light of any changes to the concurrently proposed rule, including based on the comments it receives, if and when that rule is finalized.

[43] *Conti*, 157 F.4th at 17-18 (categorizing each of these as creating a direct or obvious conflict). Moreover, New York's interest-on-escrow law is not analogous to the cases where the Court did not find preemption: *Anderson, Commonwealth,* and *McClellan*. As discussed above, these cases focus on state laws of general applicability. Accordingly, these cases have limited relevance to state interest-on-escrow laws. *See Conti*, 157 F.4th at 20 (describing state interest-on-escrow laws as "banking-specific").

[44] *Fidelity*, 458 U.S. at 146-47.

it by federal law.[45] As such, the state law created a direct conflict with the federal regulation and was preempted.[46]

Similarly, in *Barnett*, the state law forbade banks from engaging in a power that Congress had expressly authorized (selling insurance in small towns), and in *Franklin*, the state law prohibited banks from using the word "savings" in advertising, even though Congress had specifically authorized banks to receive "*savings* deposits."[47] In both cases, these state laws created similar direct conflicts with federal law and were preempted. Other federal courts have repeatedly reached similar conclusions where state law would prohibit national banks from exercising the flexibility granted to them by federal law, including as codified in OCC regulations addressing both enumerated powers and powers that part of or incidental to the business of banking.[48]

Moreover, while *Franklin* concerned a direct conflict created by the prohibition on the use of a particular Congressionally recognized term, the decision also reflects a more holistic assessment of the nature and degree of interference caused by the state law based on the view

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[45] *Id.* at 155.

[46] *Id.*; *Conti*, 157 F.4th at 28. *See also Cantero*, 602 U.S. at 217 (observing that "[t]he California law thus interfered with 'the flexibility given' to the savings and loan by" the regulation).

[47] *See Franklin*, 347 U.S. at 374 (emphasis added).

[48] *See, e.g.*, *Gutierrez v. Wells Fargo Bank, NA*, 704 F.3d 712, 723, 730 (9th Cir. 2012) (holding that "[b]oth the 'business of banking' and the power to 'receiv[e] deposits' necessarily include the power to post transactions" and that a state law purporting "to dictate a national bank's order of posting" is preempted) (quoting 12 U.S.C. 24); *Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194, 1198 (11th Cir. 2011) ("The state's prohibition on charging fees to non-account-holders, which reduces the bank's fee options by 50%, is in substantial conflict with federal authorization to charge such fees."); *Monroe Retail, Inc. v. RBS Citizens, N.A.*, 589 F.3d 274, 284 (6th Cir. 2009) (holding that the state law would "'significantly interfere' not only with the [b]anks' ability to collect and set their service fees, but also with the [b]anks' federal authority to complete other transactions and balance their accounts" (citation omitted)); *Wells Fargo Bank of Texas NA v. James*, 321 F.3d 488, 495 (5th Cir. 2003) ("[N]ational banks are authorized by federal regulation 12 C.F.R. § 7.4002(a) to charge non-account holding payees a check-cashing fee. Thus, because [the state law] prohibits the exercise of a power which federal law expressly grants the national banks, [it] is in irreconcilable conflict with the federal regulatory scheme, and it is preempted by operation of the Supremacy Clause."); *Bank of Am. v. City & Cnty. of San Francisco*, 309 F.3d at 564 ("[T]he National Bank Act and OCC regulations together preempt conflicting state limitations on the authority of national banks to collect fees for provision of deposit and lending-related electronic services.").

that national banks must be permitted to efficiently and effectively exercise the full range of powers granted to them by Congress.[49] Given the role of advertising in modern business, the Court concluded that "[i]t would require some affirmative indication to justify an interpretation that would permit a national bank to engage in a business" but give them "no right to let the public know about it."[50] That is, the power to advertise savings accounts emanated from the power to receive savings deposits, even if it was not explicitly enumerated.[51] Because the state law prohibited banks from "using the commonly understood description," it interfered with banks' ability to "effectively" and "efficiently" exercise their power to advertising and was preempted.[52]

These cases make clear that New York's interest-on-escrow law prevents or significantly interferes with a national bank's exercise of federally authorized powers. The conflict is especially clear in light of the OCC's proposed escrow rule.[53] Much like *Fidelity*, *Barnett*, and

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[49] *See Conti*, 157 F.4th at 18; *see also Rose v. Chase Bank, USA, N.A.*, 513 F.3d 1032, 1037-38 (9th Cir. 2008) (concluding that, under *Barnett* and *Franklin*, state disclosure requirements on certain credit products (so-called convenience checks) are preempted based on their interference with a national bank's exercise of its lending power, even though such disclosures did not directly affect the terms of the bank's lending); *Parks v. MBNA America Bank, N.A.*, 278 P.3d 1193, 1200 (Cal. 2012), *cert. denied*, 468 U.S. 1028 (2012) ("However, to say that [a national bank] *may* offer convenience checks *so long* as it complies with [state disclosure laws on certain credit products] is equivalent to saying that [the bank] *may not* offer convenience checks *unless* it complies with [the state law]. Whether phrased as a conditional permission or as a contingent prohibition, the effect of [the state law] is to forbid national banks from offering credit in the form of convenience checks unless they comply with state law." (emphasis in original)).

[50] *Franklin*, 347 U.S. at 377-78.

[51] This view of national bank powers is consistent with Supreme Court precedent recognizing that national banks are entitled to exercise National Bank Act powers inherent in the operation of the business of banking. *See NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 258, n.2 (Jan. 18, 1995) ("We expressly hold that the 'business of banking' is not limited to the enumerated powers in § 24 Seventh and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated."). *See also M & M Leasing Corp. v. Seattle First Nat'l Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) ("[T]he National Bank Act did not freeze the practices of national banks in their nineteenth century forms. . . . [W]hatever the scope of such powers may be, we believe the powers of national banks must be construed to permit the use of new ways of conducting the very old business of banking."); 12 C.F.R. 7.1000.

[52] *Cantero*, 602 U.S. at 216.

[53] *Fidelity*, 458 U.S. at 153 ("Federal regulations have no less pre-emptive effect than federal statutes.").

Franklin, compliance with this New York law would forbid national banks from exercising discretion regarding the payment of interest-on-escrow and the assessment of related fees and thus deprive them of the flexibility granted by federal law and confirmed by the OCC's proposed escrow rule.[54] As such, New York's interest-on-escrow law creates a direct conflict with this OCC regulation.

In addition, much like the state law in *Franklin*, compliance with New York's interest-on-escrow law would interfere with national banks' ability to efficiently and effectively exercise their real estate and related escrow powers. The discretion to set the terms and conditions of an escrow account in accordance with informed business judgment allows banks to appropriately balance the costs and benefits of establishing and maintaining these accounts and, ultimately, the risks and rewards of real estate lending more generally. If, for example, the state's mandated interest rate renders escrow accounts unprofitable in light of dynamic market rates and variable business conditions, this may cause national banks to, among other things, offer escrow accounts on fewer real estate loans; attempt to recoup costs in other ways; or even reduce lending.[55] Moreover, by generally prohibiting related service charges, New York's interest-on-escrow law would further limit a national bank's ability to defray costs, compounding its effect. This type of interference with national bank powers is at least as significant as a restriction on a national bank's power to advertise using a specific word.[56]

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[54] *See also* cases cited *supra* note 48.

[55] This may be magnified when considering the cumulative effect of complying not only with New York's law but also with varying laws in multiple states. *See San Jose*, 262 U.S. at 370 ("If California may thus interfere other States may do likewise; and . . . varying limitations may be prescribed.").

[56] The state law at issue in *Franklin* did not prohibit national banks from advertising their savings deposits, and it is not hard to imagine a national bank being able to use a different advertising formulation to similar competitive effect.

As federal courts have recognized, "'the level of interference that gives rise to preemption under the [National Bank Act] is not very high.'"[57] Therefore, under the *Barnett* standard as clarified in *Cantero*, New York's interest-on-escrow law is preempted and "must give way" to federal law.[58]

B. State Laws with Substantively Equivalent Terms

In addition to New York, at least 11 other states have interest-on-escrow laws that purport to apply to national banks: California, Connecticut, Maine, Maryland, Massachusetts, Minnesota, Oregon, Rhode Island, Utah, Vermont, and Wisconsin.[59] Much like New York's interest-on-escrow law, these state laws (1) require the payment of interest on funds deposited in certain real estate escrow accounts; and (2) in some cases, restrict the assessment of fees in connection with such accounts. The OCC is also proposing to determine that each of these state laws have substantively equivalent terms to New York's Gen. Oblig. Law section 5-601 and are thus also preempted. They 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, vests in them. Consistent with section 25b, the OCC will consult with the CFPB on whether these state laws have substantively equivalent terms. Accordingly, the OCC proposes to include these state interest-on-escrow laws in its preemption determination.

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[57] *Illinois Bankers Ass'n, et al. v. Raoul*, 760 F. Supp. 3d 636, 657 (N.D. Ill. 2024) (citing *Monroe Retail*, 589 F.3d at 283 (citation omitted) and quoting *Am. Bankers Ass'n v. Lockyer*, 239 F. Supp. 2d 1000, 1017 (E.D. Ca. 2002) ("The threshold of preemption is in some cases remarkably low.")).

[58] *See Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 12-13 (2007); *see also* 12 CFR 34.4.

[59] While Iowa has an interest-on-escrow law, the OCC understands it to be permissive. In addition, the OCC understands that New Hampshire has an interest-on-escrow law that only applies to banks chartered by the state. As such, the OCC proposes to exclude these state laws from this proposed preemption determination.

III. Request for Comment

The OCC invites comments on all aspects of this proposed preemption determination. The OCC specifically requests comment on whether there are any additional laws that have substantively equivalent terms to New York's law, including regarding the payment of interest-on-escrow or the assessment of related fees.

IV. Regulatory Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995[60] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed this proposal and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA submissions to OMB will be made with respect to this proposal.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA)[61] requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the Federal Register. An IRFA must contain: (1) a description of the reasons why action by the

[60] 44 U.S.C. 3501–3521.

[61] 5 U.S.C. 601 *et seq.*

agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

The OCC currently supervises 1,005 institutions (national banks, Federal savings associations, and branches or agencies of foreign banks),[62] of which approximately 609 are small entities under the RFA.[63]

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number, and at present, 30 OCC-supervised small entities would constitute a substantial number. While the proposed rule would impact all OCC-supervised small entities, it would likely result in some cost savings for those institutions. Therefore, the

[62] Based on data accessed using the OCC's Financial Institutions Data Retrieval System on November 20, 2025.

[63] The OCC bases its estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC used average quarterly assets in December 31, 2024 to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

OCC certifies that this proposed preemption determination, if adopted, will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[64] Under this analysis, the OCC considered whether the proposed rule includes a federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year ($187 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,[65] if a proposed rule meets this UMRA threshold, the OCC would prepares a written statement that includes, among other things, a cost-benefit analysis of the proposal.

This proposal imposes no new mandates and would likely result in a decrease in expenditures from OCC-supervised entities that may elect not to pay interest on funds held in escrow accounts. Therefore, the OCC concludes that this proposal determination, if finalized, would not result in an expenditure of $187 million or more annually by any State, local, and Tribal government, in the aggregate, or by the private sector.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994,[66] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the

[64] 2 U.S.C. 1531 *et seq.*

[65] 2 U.S.C. 1532.

[66] 12 U.S.C. 4802(a).

final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. This rulemaking would not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, section 302(a) does not apply to this proposal.

E. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023[67] requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website *www.regulations.gov*.

The OCC is proposing to issue a preemption determination concluding that federal law preempts state laws that eliminate OCC-regulated banks' 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. This preemption determination would provide much needed clarity to banks and other stakeholders.

The proposal and required summary can be found for the OCC at *https://www.regulations.gov* by searching for Docket ID OCC-2025-0735 and *https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html*.

F. Executive Order 12866 (as amended)

Executive Order 12866, titled "Regulatory Planning and Review," as amended, requires the Office of Information and Regulatory Affairs (OIRA), OMB, to determine whether a proposed rule is a "significant regulatory action" prior to the disclosure of the proposed rule to

[67] 5 U.S.C. 553(b)(4).

the public. If OIRA finds the proposed rule to be a "significant regulatory action," Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the proposed rule and for OIRA to conduct a review of the proposed rule prior to publication in the *Federal Register*. Executive Order 12866 defines a "significant regulatory action" to mean a regulatory action that is likely to (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OIRA has determined that this proposed rule is not a significant regulatory action under section 3(f)(1) of Executive Order 12866 and, therefore, is not subject to review under Executive Order 12866.

G. Executive Order 14192

Executive Order 14192, titled "Unleashing Prosperity Through Deregulation," requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. The OCC expects the proposal, if finalized, will be a deregulatory action under Executive Order 14192 because it would result in potential cost savings for OCC-supervised banks.

List of Subjects

Accounting, Banks, banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1465, 1701j-3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, and 5412(b)(2)(B).

2. Amend part 34, subpart A by adding a new section to read as follows:

* * * * *

§ 34.7 OCC Preemption Determinations

(a) *Purpose*. This section codifies preemption determinations issued by the Office of the Comptroller of the Currency.

(b) *Escrow*. The OCC has determined that federal law preempts state laws that eliminate a national bank's or Federal savings association's flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in escrow accounts or assess fees for such accounts, including the following state laws:

(1) Cal. Civ. Code § 2954.8;

(2) Conn. Gen. Stat. § 49-2a;

(3) Me. Rev. Stat. Ann. tit. 33, § 504; Me. Rev. Stat. Ann. tit. 9-B, § 429;

(4) MD. Comm. Law Code Ann. § 12-109, § 12-109.2;

(5) Mass. Gen. L. ch. 183, § 61;

(6) Minn. Stat. Ann. § 47.20, subd. 9;

(7) N.Y. Gen. Oblig. Law § 5-601;

(8) OR. Rev. Stat. § 86.245; § 86.250;

(9) R.I. Gen. Laws § 19-9-2;

(10) Utah Code Ann. § 7-17-3;

(11) Vt. Stat. Ann. tit. 8, § 10404;

(12) Wis. Stat. §§ 138.051; 138.052; and

(13) The laws of any other state with substantively equivalent terms.

Jonathan V. Gould,
Comptroller of the Currency.