DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

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Preemption Determination: State Interest-on-Escrow Laws

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

ACTION: Final rule.

SUMMARY: The OCC is issuing a preemption determination concluding that Federal law preempts State laws that restrict OCC-regulated banks' flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in real estate escrow accounts; or assess fees in connection with such accounts. This preemption determination will provide much-needed clarity to banks and other stakeholders.

DATES: This final rule is effective on June 18, 2026.

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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 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 multistate markets. This can expand access to financial services and facilitate competition, leading to lower costs and increased consumer choice. 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]

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. The DOJ and NEC also requested public comment on 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.

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 restrict 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 restrict banks' flexibility to assess related fees.

While the Supreme Court considered whether Federal law preempts State interest-on-escrow laws in *Cantero* v. *Bank of America, N.A.,* the Court did not affirmatively decide the question but instead reaffirmed the standard for conflict preemption established in *Barnett Bank* v. *Nelson* and codified in Dodd-Frank.[7] Following the Supreme Court's *Cantero* decision, several circuits have considered the issue. The U.S Court of Appeals for the Second Circuit concluded that the relevant State interest-on-escrow law is preempted while the First and Ninth Circuits reached the opposite result, creating a circuit split.[8] In light of ongoing litigation, there remains substantial uncertainty for stakeholders who seek to rely on longstanding principles of Federal preemption in the context of State interest-on-escrow laws. Moreover, this litigation has introduced ambiguity regarding how to evaluate National Bank Act preemption generally.[9] To provide much-needed clarity and reaffirm these longstanding preemption principles, on December 30, 2025, the OCC proposed to issue a preemption determination addressing State interest-on-escrow laws.[10] The OCC is now finalizing its preemption determination, alongside its concurrent rulemaking to codify national banks' and Federal savings associations' longstanding escrow account powers (Escrow Powers Rule).[11]

B. Proposed Preemption Determination and Comments

The OCC proposed to conclude that (1) the National Bank Act preempts

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

[2] *See Barnett Bank* v. *Nelson,* 517 U.S. 25 (1996); *Marquette Nat'l Bank of Minneapolis* v. *First of Omaha Serv. Corp.,* 439 U.S. 299, 314–15 (1978) (stating that when Congress enacted the National Bank Act over 150 years ago, it ''intended to facilitate . . . a 'national banking system.' '' (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 States.''); *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 on Interstate Commerce,* 90 FR 39427 (Aug. 15, 2025).

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

[7] 602 U.S. 205.

[8] *Compare Cantero* v. *Bank of Am., N.A.,* — F.4th —, 2026 WL 1217467 (2d Cir. May 5, 2026) (*Cantero* Remand) *with 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); *see also Lusnak* v. *Bank of Am., N.A.,* 883 F.3d 1185 (9th Cir. 2018).

[9] For purposes of this 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.

[10] *Preemption Determination: State Interest-on-Escrow Laws,* 90 FR 61093 (Dec. 30, 2025).

[11] The OCC's final Escrow Powers Rule is published elsewhere in this issue of the **Federal Register**.

section 5–601 of New York's General Obligations Law, the State's interest-on-escrow law; (2) eleven other States have laws with substantively equivalent terms; [12] and (3) these substantively equivalent State laws are also preempted.[13] The OCC's proposal reflected the agency's conclusion that State interest-on-escrow laws prevent or significantly interfere with a national bank's exercise of its Federally authorized powers, consistent with Dodd-Frank and relevant Supreme Court precedent. The OCC also explained that its proposed preemption determination would complement the OCC's concurrent proposed Escrow Powers Rule,[14] stating that if the concurrent Rule were finalized, State interest-on-escrow laws would directly conflict with the Federal power addressed therein and would thus be preempted. The OCC received approximately 20 comments on its proposed preemption determination from a variety of stakeholders, including banks, trade associations, members of Congress, consumer groups, academics, State representatives, and individuals.[15]

Commenters who supported the proposal stated that it would, among other things, (1) be consistent with Federal law, which already preempts State interest-on-escrow laws; (2) provide helpful clarity; (3) support uniformity; and (4) reduce operational complexity. They also observed that these State laws can increase mortgage prices and decrease mortgage availability, especially for lower-income borrowers.[16] These commenters also noted that the proposal would support a stable and accessible mortgage market.

Commenters who opposed to the proposal raised a variety of legal and policy objections, including that the preemption determination (1) incorrectly applies the *Barnett* standard; (2) reflects an inaccurate reading of one or more of the *Barnett* antecedent cases cited in *Cantero;* and (3) does not comply with the requirements of 12 U.S.C. 25b. These commenters also raised concerns regarding the effects of the proposal, including on competitive equality between different types of mortgage lenders, mortgage affordability, consumer protection, fairness, and litigation risk for banks that fail to comply with these State laws.[17] Key themes raised by commenters are addressed below.

Preemption standard. Many commenters provided their views on the *Barnett* standard and its application to State interest-on-escrow laws. For example, several commenters asserted that these State laws are not preempted, that the OCC has not properly understood and applied *Barnett's* antecedent cases, and that the OCC has not demonstrated that compliance with State interest-on-escrow laws would result in net losses related to escrow account administration.[18] Other commenters agreed with the OCC conclusions on preemption but suggested some changes, including recommending that the OCC emphasize that the *Barnett* standard does not require financial harm. The OCC's preemption determination reflects the agency's application of the *Barnett* standard based on its careful review of Dodd-Frank and relevant precedent. This standard does not require the OCC or a national bank to demonstrate that compliance with State interest-on-escrow laws would cause financial harm. Requiring such a showing would make application of the *Barnett* standard variable, unpredictable, and ultimately unworkable because it would turn on multiple changing factors, such as bank size and activity, economic conditions, and geography. There is no support for this contention in *Cantero, Barnett,* or *Barnett's* antecedent cases. Rather, preemption is fundamentally a question of law that includes consideration of *Barnett* and its antecedent cases, as well as ''the text and structure of the laws, comparison to other precedents, and common sense.'' [19]

Field preemption. Some commenters viewed the OCC preemption determination as applying a field preemption standard to State interest-on-escrow laws, which Congress expressly rejected in Dodd-Frank. Contrary to these commenters' assertions, this preemption determination is based on a case-by-case application of the National Bank Act's conflict preemption standard, which was articulated by the Supreme Court in *Barnett,* codified in Dodd-Frank, and reaffirmed by the Supreme Court in *Cantero.* It addresses State interest-on-escrow laws specifically and is based on the OCC's conclusion that these laws prevent or significantly interfere with a national bank's exercise of its Federally authorized powers.

Preemption precedent generally. Some commenters asserted that the OCC cannot rely on certain Supreme Court precedents that were not cited in *Cantero* or on pre-*Cantero* decisions issued by lower courts. The OCC continues to believe that it has appropriately cited these cases. More generally, preemption precedent that applies the *Barnett* standard continues to be good law, regardless of whether the precedent pre-dates *Cantero. Cantero* itself emphasized the role of precedent in analyzing National Bank Act preemption, and there is no basis to conclude that it intended to silently overturn decades of well-developed case

[12] The OCC also requested comment on whether any additional State laws have substantively equivalent terms.

[13] The analysis in the proposed preemption determination focused 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 law preempts State regulation of Federal savings associations. 12 U.S.C. 1465(a). As such, the OCC's proposed and final analyses apply equally to Federal savings associations and preemption by the HOLA.

[14] *Real Estate Lending Escrow Accounts,* 90 FR 61099 (Dec. 30, 2025).

[15] Several commenters requested that the OCC extend the comment period, which the OCC declined to do. The OCC determined that the original comment period provided a meaningful opportunity to comment consistent with the requirements of the Administrative Procedure Act and that its preemption determination should be finalized as expeditiously as possible. The volume and range of comments the OCC received on the proposal is consistent with the OCC's conclusion that the comment period was sufficient.

[16] For example, one commenter provided a case study of Iowa's repeal of its mandatory interest-on-escrow requirement, which concludes that the majority of interest payments pre-repeal were passed on to consumers via higher origination fees, including at a rate of over 100 percent for lower-income borrowers, and that origination fees fell substantially post-repeal, as compared to other similarly situated States.

[17] The OCC has carefully considered the policy issues raised by these commenters and believes that this rule, in conjunction with the agency's concurrent Escrow Powers Rule, is consistent with applicable law and provides important clarity to stakeholders. The OCC also believes that there is a robust Federal framework to protect consumers. While these rules are likely to impact certain mortgage borrowers, the flexibility that they provide to institutions (including the flexibility to reduce borrower costs in other areas in lieu of providing minimal interest on escrow accounts) will help to support efficient and effective mortgage lending, which ultimately inures to the benefit of U.S. consumers and the economy.

[18] Some commenters asserted that 15 U.S.C. 1639d, which addresses escrow account requirements for certain mortgages, evinces broad congressional intent to require national banks to comply with State interest-on-escrow laws, including for escrow accounts outside the scope of the statute. The OCC disagrees with these commenters. Section 1639d is not limited to national banks but rather applies to a wide variety of creditors, including many that are State regulated. Section 1639d's references to State law are thus best understood to reflect Congress's intent to ensure that State law continues to apply to other creditors. Furthermore, Congress simultaneously enshrined the *Barnett* standard in 12 U.S.C. 25b, and nothing in section 1639d supports the contention that the same Congress intended to obliquely overturn or modify this standard as applied to national banks' escrow accounts.

[19] *Cantero,* 602 U.S. at 220 n.3; *see also Cantero* Remand, 2026 WL 1217467, at *6, n.5.

law applying *Barnett.*[20] Moreover, many of the decisions that commenters objected to have been cited in relevant Supreme Court precedent or other recent lower court decisions.

Interest-on-escrow precedent. Several commenters asserted that the OCC's preemption determination ignores or is otherwise inconsistent with decisions in the First and Ninth Circuits addressing whether the National Bank Act preempts State interest-on-escrow laws. As explained throughout this preemption determination, the OCC believes its analysis and conclusions are fully consistent with Supreme Court precedent. Moreover, the analysis and conclusions are consistent with the First Circuit's decision, which concluded that State laws are preempted where there is a direct or obvious conflict with State law.[21] In addition, following the close of the comment period, the Second Circuit concluded that the National Bank Act preempts New York's interest-on-escrow law. The OCC's proposed analysis is consistent with the Second Circuit's decision, which cited both the OCC's proposed preemption determination and proposed Escrow Powers Rule.

Compliance with procedural requirements of Dodd-Frank. Multiple commenters addressed the OCC's compliance with the procedural requirements of Dodd-Frank (codified at 12 U.S.C. 25b). For example, some asserted that the OCC did not comply with the requirement to act on a case-by-case basis, including because it did not engage in a sufficiently particularized assessment of the relevant State laws. Others recommended that the OCC clarify the meaning of case-by-case. Commenters also asserted that the OCC's preemption determination was not supported by substantial evidence. Some also suggested that the OCC could strengthen its analysis by including more data. As the proposal and this final determination make clear, the OCC has complied with the requirements of section 25b. National Bank Act preemption is fundamentally a question of law, and this final preemption determination includes ample analysis to support its conclusion.[22] The OCC has added more detail to its discussion of these statutory requirements where appropriate to provide clarity.

Comments on regulatory text. The OCC also received comments recommending specific changes to its proposed regulatory text, which would have provided: ''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 twelve listed State interest-on-escrow laws and any other State law with substantively equivalent terms. First, commenters requested that the OCC revise its preemption determination to clarify that it applies to State interest-on-escrow laws that ''restrict'' flexibility, not only those that ''eliminate'' it. The OCC agrees and has amended its final preemption determination accordingly. Consistent with the analysis in the OCC's proposed preemption determination and the OCC's concurrently proposed Escrow Powers Rule, a State interest-on-escrow law does not need to completely remove all flexibility to be preempted.

Second, commenters recommended that the OCC expand the preemption determination to include the interest-on-escrow laws in Guam and the U.S. Virgin Islands. The OCC agrees that these interest-on-escrow laws both have substantively equivalent terms to New York's interest-on-escrow law, and the OCC has incorporated these laws into its preemption determination.[23] Third, some commenters raised concerns with the proposed inclusion of language providing that any other State law with substantively equivalent terms is preempted. The OCC included this placeholder language in its proposal to reflect the possibility that commenters might identify additional State interest-on-escrow laws for potential inclusion in the final preemption determination, a topic on which the OCC specifically requested comment. Now that commenters have addressed this issue, the placeholder language is no longer necessary. The OCC has removed it from the final regulatory text.[24]

Additional State laws. Commenters also recommended that the OCC expand the scope of its proposed preemption determination to address State laws that impose other kinds of requirements on escrow accounts or require the payment of interest on funds held by national banks in other similar circumstances. The OCC declines to expand the scope of this preemption determination beyond State interest-on-escrow laws, which are the focus of this issuance. However, the OCC will continue to assess whether to issue additional preemption determinations, including with respect to the other State laws highlighted by commenters, as appropriate.

After carefully considering these comments, the OCC is issuing this final preemption determination, which concludes that (1) the National Bank Act preempts section 5–601 of New York's General Obligations Law, the State's interest-on-escrow law; (2) thirteen other States have laws with substantively equivalent terms; and (3) these substantively equivalent State laws are also preempted.[25] The OCC has made clarifying changes to this final preemption determination as appropriate.

II. Final Preemption Determination

A. New York Interest-on-Escrow Law

Section 5–601 of New York's General Obligations Law requires ''mortgage investing institutions'' to pay

[20] *Id.* (stating that *Barnett* and its antecedents were based on consideration of ''comparison to other precedents''); *see also id.* at 215–16 (''[C]ourts addressing preemption questions in this context must . . . take account of those prior decisions of this Court and similar precedents.'').

[21] *See Conti,* 157 F.4th at 17–18. While this preemption determination is consistent with this standard, the OCC also emphasizes that the National Bank Act preempts State laws that prevent or significantly interfere with a national bank's exercise of its Federally authorized powers, regardless of whether those powers are specifically enumerated or incidental; enumerated powers do not have some greater preemptive effect than those that are incidental. *See Barnett,* 517 U.S. at 32 (concluding that ''grants of both enumerated and incidental 'powers' to national banks . . . [are] not normally limited by, but rather ordinarily pre-empt[, contrary state law'']); *see also Cantero,* 602 U.S. at 215 (quoting this language from *Barnett*); *Watters* v. *Wachovia Bank, N.A.,* 550 U.S. 1, 19, 20 (2007) (''[W]hen state prescriptions significantly impair the exercise of authority, enumerated or incidental under the [National Bank Act], the State's regulations must give way.''), *superseded by statute on other grounds,* 12 U.S.C. 25b.

[22] Another commenter alleged that the OCC failed to provide technical studies and data supporting its proposed preemption determination. Relevant caselaw requires that agencies disclose technical studies, *when such studies form the basis of a proposed rule,* in order to give the public adequate opportunity to provide comment. *See Owner-Operator Indep. Drivers Ass'n, Inc.* v. *Fed. Motor Carrier Safety Admin.,* 494 F.3d 188, 199 (D.C. Cir. 2007) (cited by the commenter). The OCC has not relied on any technical studies or data for its analysis in this preemption determination, nor is it required to do so.

[23] For purposes of this preemption determination, the term ''State'' includes Guam and the U.S. Virgin Islands.

[24] The OCC notes, however, that the same preemption standard and analysis would apply to other State interest-on-escrow laws that have substantively equivalent terms even if they are not specifically incorporated into this final preemption determination.

[25] As noted above, the Second Circuit recently issued a decision concluding that Federal law preempts New York's interest-on-escrow law. *See Cantero* Remand, 2026 WL 1217467. Nonetheless, the OCC has decided to retain this structure, including the discussion and focus on the New York law, in this final preemption determination to maintain consistency with the proposal and clarity. Regardless of this focus, however, the preemption analysis set forth herein applies equally to the thirteen other laws with substantively equivalent terms.

''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.[26] 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.[27] 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.

B. 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.[28] 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.[29] In *Barnett,* 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.[30] 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.'' [31]

In 2024, in *Cantero,* 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.'' [32] 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.'' [33] In addition to *Barnett,* the *Cantero* Court specifically discussed six antecedent cases, noting that they ''furnish content'' regarding the *Barnett* standard.[34]

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 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.[35]

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.[36]

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.[37] Federal law granted national banks the express power to accept savings deposits and the incidental power to advertise. Because the State law interfered with national banks' ability to exercise these powers ''effectively'' and ''efficiently,'' it was preempted.[38]

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 State.[39] 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.

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.[40] For example, in *Anderson National Bank* v. *Luckett,* the Supreme Court contrasted the California 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 as ''old as the common law itself.'' [41] The *Anderson* Supreme Court noted that the State law addressed the transfer and devolution of property in the State,[42] a kind of generally applicable State ''infrastructure'' law that is typically not preempted.[43]

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 ability to efficiently exercise their Federally authorized powers. 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.[44] Similarly, in *First National Bank* v. *Kentucky,* the Supreme Court held that a Kentucky tax law was not preempted,

[26] N.Y. Gen. Oblig. Law 5–601.

[27] *Id.*

[28] 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.'').

[29] *See Barnett,* 517 U.S. at 25.

[30] *Id.* at 33; *see* 12 U.S.C. 25b.

[31] *Barnett,* 517 U.S. at 32. As this language in *Barnett* reflects, there is no presumption against preemption in the context of National Bank Act preemption. *See, e.g., Bank of Am.* v. *City & County of San Francisco,* 309 F.3d 551, 558 (9th Cir. 2002).

[32] *Cantero,* 602 U.S. at 219–20.

[33] *Id.* at 219–21 and n.3.

[34] *Id.* at 219–20 (citing *Fid. Fed. Sav. & Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141 (1982); *Franklin Nat'l Bank of Franklin Square* v. *New York,* 347 U.S. 373 (1954); *First Nat'l Bank of San Jose* v. *California,* 262 U.S. 366 (1923); *Anderson Nat'l Bank* v. *Luckett,* 321 U.S. 233 (1944); *McClellan* v. *Chipman,* 164 U.S. 347 (1896); *First Nat'l Bank* v. *Kentucky,* 76 U.S. 353 (1869)). 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.

[35] *Barnett,* 517 U.S. at 32.

[36] 458 U.S. at 159.

[37] 347 U.S. at 373.

[38] *Cantero,* 602 U.S. at 216 (discussing *Franklin*). The Supreme Court's preemption analysis in *Franklin* did not turn on a distinction between the express Federal power and the incidental Federal power.

[39] 262 U.S. at 366–67, 370.

[40] *Barnett,* 517 U.S. at 33–34.

[41] 321 U.S. at 251–52.

[42] *Id.* at 248.

[43] *See* 12 CFR 7.4007(c)(5), 7.4008(e)(5), and 34.4(b)(6). The differing outcomes in *San Jose* and *Anderson,* which both addressed State dormant account laws, demonstrate that even generally applicable State infrastructure laws may be preempted if they prevent or significantly interfere with a national bank's exercise of its Federally authorized powers.

[44] 164 U.S. at 357–61.

noting that 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.[45]

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.[46] Specifically, these cases demonstrate that, at a minimum, a State law prevents or significantly interferes with a Federal power when it interferes with critical flexibility granted to a national bank under Federal law, interferes with a national bank's effectiveness or efficiency in exercising its Federal power, or qualifies a Federal power in an unusual way.[47] In contrast, as discussed above, generally applicable infrastructure laws typically apply to national banks, unless they prevent or significantly interfere with a national bank's exercise of its Federally authorized powers.

C. 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,'' [48] such as State interest-on-escrow laws.[49] In particular, section 25b codified the *Barnett* standard,[50] expressly recognized the OCC's role in preemption, and established procedural requirements for OCC ''preemption determinations.'' [51]

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. This provision makes clear that the OCC can address multiple State laws in one preemption determination and is not required to engage in a separate law-by-law preemption analysis. Moreover, by its express language, section 25b does not require these State laws to have identical terms, only terms that are substantively equivalent.

In addition, Dodd-Frank requires that ''substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption . . . in accordance with'' *Barnett*.[52] Consistent with the Supreme Court's directive in *Cantero,* a finding of preemption under *Barnett* is based on an assessment of that decision and its antecedent cases, as well as ''the text and structure of the laws, comparison to other precedents, and common sense.'' [53] The analysis is ''broadly legal and not factual in nature'' [54] and does not require ''evidence of a law's real-world effects.'' [55]

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

National banks are ''necessarily subject to the paramount authority of the United States.'' [56] At the center of this system is a Federal framework for regulation and supervision that authorizes 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.[57]

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 [12 U.S.C. 1828(o)] and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.'' [58] Much like the Federal power addressed in *Barnett,* national banks' real estate lending authority is a ''broad, not a limited'' authorization that is ''without relevant qualification.'' [59] As such, it is a grant of authority ''not normally limited by, but rather ordinarily pre-empting, contrary state law.'' [60]

Frequently, national banks offer or require borrowers to establish escrow accounts when they make real estate loans. These escrow accounts serve a variety of purposes, including protecting the priority of the bank's security interest in the property that collateralizes the loan, maintaining appropriate insurance on the property, and simplifying expenses and budgeting for the borrower.[61] When a national bank establishes and maintains an escrow account, it makes a variety of decisions that collectively allow the bank to balance these costs and risks with the benefits of such accounts.

[45] 76 U.S. at 262–63. 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.*

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

[47] 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; *see supra* n.21.

[48] 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).

[49] *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'').

[50] 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 No. 1173* (Dec. 18, 2020); *Office of Thrift Supervision Integration; Dodd-Frank Act Implementation,* 76 FR 43549, 43555 (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).

[51] 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).

[52] 12 U.S.C. 25b(c). 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. *See* 12 U.S.C. 25b(d), (g). 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.

[53] *Cantero,* 602 U.S. at 220 n.3.

[54] *Ill. Bankers Ass'n* v. *Raoul,* -FEFF;-FEFF;- F. Supp. 3d -FEFF;-FEFF;-, 2026 WL 371196, at *5 (N.D. Ill. Feb. 10, 2026), *vacated on other grounds,* 2026 WL 1291987, at *1 (7th Cir. May 8, 2026).

[55] *Cantero* Remand, 2026 WL 1217467, at *6, n.5 (stating that none of the Supreme Court's preemption cases consider ''evidence of a state law's 'real-world consequences upon banks' '').

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

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

[58] 12 U.S.C. 371; *see also* 12 U.S.C. 24(Seventh) (vesting banks with additional powers). Congress has progressively expanded national banks' real estate lending powers under section 371. Initially limited to loans on farm land (sec. 24, Pub. L. 63–43, 38 Stat. 251, 273 (1913)), Congress amended the law to include limited general real estate lending in 1916 (Pub. L. 64–270, 39 Stat. 752, 754–55 (1916)) and, through the years, removed all limits and conditions on real estate lending other than those prescribed by the Comptroller (sec. 403, Pub. L. 97–320, 96 Stat. 1469, 1510–11 (1982)). The statute's grant of authority to the OCC to establish applicable restrictions and requirements does not reflect Congressional intent to limit this power.

[59] *Barnett,* 517 U.S. at 32; *see also Cantero,* 602 U.S. at 215.

[60] *Barnett,* 517 U.S. at 32.

[61] *Cantero,* 602 U.S. at 210–11.

Flexibility in structuring the terms and conditions of such accounts is critical to help ensure that banks can effectively and efficiently use escrow accounts, which are a crucial risk mitigation tool that supports safe and sound lending. The OCC has long recognized this principle, including in its *Interagency Guidelines for Real Estate Lending.*[62] These Guidelines state that each insured depository institution should establish loan administration procedures for its real estate portfolio that address ''Escrow administration,'' along with other core aspects of the lending arrangements. However, the Guidelines give banks substantial flexibility in how they address these topics.

Further, the OCC is concurrently issuing its final Escrow Powers Rule to codify national banks' longstanding authority to establish and maintain escrow accounts and their flexibility to make informed business decisions about how to effectively and efficiently set the terms and conditions of their escrow accounts. Specifically, the Escrow Powers Rule clarifies that the terms and conditions of any such escrow account, including the investment of escrowed funds, fees assessed for the provision 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 each national bank in its discretion. The Escrow Powers Rule thus makes express national banks' broad, federally authorized power to ''offer and set the terms of mortgage-escrow accounts.'' [63]

Contrary to the flexibility granted by Federal law, New York's interest-on-escrow law dictates a minimum interest a national bank must pay on funds held in escrow accounts and generally prohibits the national bank 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 with a national bank's Federally authorized powers 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*.[64]

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.'' [65] 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 it by Federal law.[66] As such, the Federal regulation preempted the State law.[67]

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.'' [68] In both cases, these State laws conflicted 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 are part of or incidental to the business of banking.[69]

Moreover, while the State law at issue in *Franklin* prohibited the use of a particular congressionally recognized term, the decision reflects a more holistic assessment of the nature and degree of interference caused by the State law based on the view that national banks must be permitted to effectively and efficiently exercise the full range of powers granted to them by Congress.[70] 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.'' [71] That is, the power to advertise savings accounts emanated from the power to receive savings deposits, even if it was not explicitly enumerated.[72] Because the State law

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[62] *See* 12 CFR part 34 appendix A to subpart D.

[63] *See Cantero* Remand, 2026 WL 1217467, at *1.

[64] *Cantero* Remand, 2026 WL 1217467, at *9 (''New York's interest-on-escrow law is preempted because it is 'akin to' the laws the Supreme Court has struck down for significantly interfering with a national bank's powers.'') (citations omitted); *Conti,* 157 F.4th at 15, 17–18 (categorizing each of the laws or regulations at issue in *Barnett, Franklin,* and *Fidelity* 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, Kentucky,* 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''); *Cantero* Remand, 2026 WL 1217467, at *7 (''New York's law is not generally applicable. . . . That characteristic differentiates it from the non-preempted laws in *McClellan* and *Anderson.*'').

[65] *Fid. Fed. Sav. & Loan Ass'n,* 458 U.S. at 146–47 (quoting 12 CFR 545.8–3(f) (1982)).

[66] *Id.* at 155 (quoting 12 CFR 556.9(f)(1) (1982)).

[67] *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).

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

[69] *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 (second alteration in original) (quoting 12 U.S.C. 24)), *abrogated in part on other grounds by TransUnion LLC* v. *Ramirez,* 594 U.S. 413 (2021); *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 Tex. NA* v. *James,* 321 F.3d 488, 495 (5th Cir. 2003) (''[N]ational banks are authorized by federal regulation 12 CFR 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 & County 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.'').

[70] *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 known as 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 Am. Bank, N.A.,* 278 P.3d 1193, 1200 (Cal. 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.'').

[71] *Franklin,* 347 U.S. at 377–78.

[72] 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 N.C., N.A.* v. *Variable Annuity Life Ins. Co.,* 513 U.S. 251, 258, n.2 (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) (''[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 so as to permit the use of new ways of conducting the very old business of banking.''); 12 CFR 7.1000.

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.[73]

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 concurrent Escrow Powers Rule.[74] Much like *Fidelity, Barnett,* and *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 concurrent Escrow Powers Rule.[75] As such, New York's interest-on-escrow law creates a direct conflict with the broad Federally authorized powers expressly codified in the OCC's concurrent Escrow Powers Rule.

In addition, much like the State law in *Franklin,* New York's interest-on-escrow law interferes with national banks' ability to effectively and efficiently 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. The 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.[76] Requiring 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. It could also lead national banks to offer escrow accounts on fewer real estate loans or even reduce lending if, for example, the cost of compliance is too high, particularly as dynamic market rates and business conditions evolve.[77] This may disproportionately affect lower-income borrowers.[78] 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.[79]

As Federal courts have recognized, ''the level of 'interference' that gives rise to preemption under the [National Bank Act] is not very high.'' [80] Therefore, under the *Barnett* standard as clarified in *Cantero,* New York's interest-on-escrow law is preempted [81] and ''must give way'' to Federal law.[82]

E. State Laws With Substantively Equivalent Terms

In addition to New York, at least thirteen other States have interest-on-escrow laws that purport to apply to national banks: California, Connecticut, Guam, Maine, Maryland, Massachusetts, Minnesota, Oregon, Rhode Island, Utah, Vermont, Wisconsin, and the U.S. Virgin Islands.[83] Much like New York's

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

[74] *Fid. Fed. Sav. & Loan Ass'n,* 458 U.S. at 153 (''Federal regulations have no less pre-emptive effect than federal statutes.''). The dissent in the *Cantero* Remand attempts to distinguish *Fidelity* from the OCC's issuance of this preemption determination alongside its Escrow Powers Rule. Specifically, the dissent notes that the Supreme Court in *Fidelity* found that the agency had the authority to promulgate the regulations at issue and to preempt state law. *Cantero* Remand, 2026 WL 1217467, at *21, n.13 (Pérez, J., dissenting). Rather than distinguishing *Fidelity,* this point highlights why these OCC actions are squarely aligned with *Fidelity.* The OCC has clear statutory authority to promulgate its Escrow Powers Rule, as the OCC has extensively set forth in that preamble. That an OCC regulation may have the effect of preempting certain state law does not undermine the OCC's authority to issue it. *See, e.g., Conf. of State Bank Supervisors* v. *Conover,* 710 F.2d 878, 883 (D.C. Cir. 1983) (''[I]f the regulations would *otherwise* be valid, their preemptive effect does not invalidate them *unless* Congress has expressed, either explicitly or implicitly, an intent that preemption is *not* within the Comptroller's power.''). In addition, section 25b specifically authorizes the OCC to determine whether Federal law, which includes OCC regulations, preempts a state consumer financial law under the *Barnett* standard. That is precisely what the OCC is doing in this preemption determination. Therefore, the OCC clearly has authority to issue each of these actions independently. There is no basis to conclude that issuing them concurrently undermines this authority.

[75] *See also supra* nn. 69, 70 and associated text (collecting cases). In the *Cantero* Remand decision, the dissent opines that the *Barnett* analysis does not turn on whether a state law constrains a national bank's flexibility because this would result in preemption of virtually every state law. *Cantero* Remand, 2026 WL 1217467, at *21–22 (Pérez, J., dissenting). In *Cantero,* the Supreme Court specifically noted that the state law at issue in *Fidelity* was preempted because it ''interfered with 'the flexibility given' to the savings and loan by federal law,'' (*i.e.,* a federal regulation). *Cantero,* 602 U.S. at 217 (citations omitted). This framing reflects the Supreme Court's recognition that a state law can prevent or significantly interfere with a national bank's powers if it interferes *with flexibility.* However, the OCC need not define the outer bounds of this flexibility analysis because New York's interest-on-escrow law is clearly within these bounds. As the Second Circuit majority recognized when it cited the OCC's proposed Escrow Powers Rule, ''mortgage-escrow accounts are a 'crucial risk mitigation tool that supports safe and sound mortgage lending,'' national banks have the authority ''to offer and set the terms of mortgage-escrow accounts,'' and the nature and degree of interference caused by New York's interest-on-escrow law is akin to that in *Fidelity, Barnett,* and *Franklin. Cantero* Remand, 2026 WL 1217467, at *1, 6–9.

[76] *See* 12 CFR 7.4002 (addressing non-interest fees); *see also* 12 U.S.C. 85 and 12 CFR 7.4001 (addressing permissible interest for national bank loans, including the applicable usury cap). Multiple courts have concluded that State laws on non-interest fees, such as ATM fees, prevent or significantly interfere with a national bank's exercise of its Federally authorized powers and are preempted. *See, e.g.,* cases cited *supra* note 69; *see also Cantero* Remand, 2026 WL 1217467, at *9 (''a state law restricting the pricing of a bank's product would have a material impact''); *Kivett,* 154 F.4th at 660 (Nelson, J., dissenting) (concluding that the advertising restriction in *Franklin* ''pales in comparison to a state law that dictates a national bank's pricing of its mortgage products'').

[77] *See Kivett,* 154 F.4th at 660 (Nelson, J., dissenting) (quoting *McShannock* v. *JP Morgan Chase Bank, N.A.,* 976 F.3d 881, 893–94 (9th Cir. 2020)). This example is intended to make clear the potential effects of State interest-on-escrow laws on national banks. However, the OCC emphasizes that the *Barnett* standard does not require financial impact, such as unprofitability or net losses. As noted previously, requiring such a showing would make application of the *Barnett* standard variable, unpredictable, and ultimately unworkable because it would turn on multiple changing factors, such as bank size and activity, economic conditions, and geography. *Cantero, Barnett,* and the *Barnett* antecedents do not support such an outcome.

[78] *See id.* The effects on a national bank's exercise of its powers 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 First Nat'l Bank of San Jose,* 262 U.S. at 370 (''If California may thus interfere other states may do likewise; and . . . varying limitations may be prescribed.''); *see also Kivett,* 154 F.4th at 662–63 (Nelson, J., dissenting) (citing *Watters,* 550 U.S. at 13–14, and *Easton,* 188 U.S. at 229). Several commenters provided information supporting this conclusion, noting that compliance with varied State interest-on-escrow laws introduces significant complexity, including compliance and operational challenges. This is consistent with the OCC's supervisory experience as reflected in the *Comptroller's Handbook,* which addresses operational costs and risks associated with managing escrow accounts. *See* OCC, *Comptroller's Handbook,* ''Mortgage Banking,'' 15, 53–54 (2014).

[79] 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. *See Cantero* Remand, 2026 WL 1217467, at *8 (citations omitted); *Kivett,* 154 F.4th at 660 (Nelson, J., dissenting).

[80] *Monroe Retail,* 589 F.3d at 283 (citing *Ass'n of Banks in Ins., Inc.* v. *Duryee,* 270 F.3d 397, 409 (6th Cir. 2001)); *see also Am. Bankers Ass'n* v. *Lockyer,* 239 F. Supp. 2d 1000, 1017 (E.D. Ca. 2002).

[81] *Cantero* Remand, 2026 WL 1217467.

[82] *See Watters,* 550 U.S. at 12–13; *see also* 12 CFR 34.4.

[83] While Iowa has an interest-on-escrow law, the OCC understands it to be permissive. In addition,

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 has evaluated the terms of each of these State laws and determined that they have substantively equivalent terms to section 5–601 of New York's General Obligations Law. Although the specific provisions of these laws vary to some degree,[84] each State law has the same effect: depriving national banks of the flexibility to exercise the discretion that Federal law, as confirmed in the OCC's Escrow Powers Rule, vests in them. Consistent with section 25b, the OCC has consulted with the CFPB on whether these State laws have substantively equivalent terms. The CFPB concurred with the OCC's determination and reasoning. Accordingly, the OCC's final preemption determination incorporates these thirteen other State interest-on-escrow laws.[85]

III. Administrative Law Matters

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [86] (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 rule and determined that it does not create any new or revise any existing collections of information under the PRA. Accordingly, no PRA submissions to OMB will be made with respect to this final rule.

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) [87] requires an agency, in connection with a final rule, to prepare a final regulatory flexibility analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total assets of $47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises 991 institutions (national banks, Federal savings associations, and branches or agencies of foreign banks),[88] of which approximately 602 are small entities under the RFA.[89]

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 final rule will impact a substantial number of OCC-supervised small entities, it would likely result in some cost savings for those institutions. For these reasons, the OCC certifies that this final preemption determination will not have a significant impact on a substantial number of small entities supervised by the OCC. Accordingly, a final regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[90] Under this analysis, the OCC considered whether the final 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 ($193 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,[91] if a final rule meets this UMRA threshold, the OCC prepares a written statement that includes, among other things, a cost-benefit analysis of the final rule.

This final rule imposes no new mandates and will likely result in a decrease in expenditures from OCC-supervised entities that may elect not to pay interest on funds held in escrow accounts due to clarity on the preemption of state interest-on-escrow laws. Therefore, this final preemption determination will not result in an additional expenditure of $193 million or more annually by any State, local, and Tribal government, in the aggregate, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

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,[92] 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 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 will not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, section 302(a) does not apply.

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 final rule is a ''significant regulatory action'' prior to the disclosure of the final rule to the public. If OIRA finds

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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 proposed to exclude these State laws from its preemption determination. Commenters did not provide contrary information, and as such, the OCC is not including these State laws in its final preemption determination.

[84] For example, the State laws have varied scoping provisions. These distinctions do not undermine the OCC's determination that these state laws have substantively equivalent terms. This conclusion is consistent with the Second Circuit's analysis in the *Cantero* Remand, which did not turn on the specific provisions of New York's law.

[85] The OCC's regulatory text cites each State law at the section level. To the extent that these sections of State law include provisions that do not relate to interest-on-escrow or fees, they are outside the scope of this preemption determination.

[86] 44 U.S.C. 3501–21.

[87] 5 U.S.C. 601 *et seq.*

[88] Based on data accessed using the OCC's Financial Institutions Data Retrieval System on May 8, 2026.

[89] 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 counts 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 on December 31, 2025, 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.*

[90] 2 U.S.C. 1531 *et seq.*

[91] 2 U.S.C. 1532.

[92] 12 U.S.C. 4802(a).

the final rule to be a ''significant regulatory action,'' Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the final rule and for OIRA to conduct a review of the final 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 final rule is not a significant regulatory action under Executive Order 12866 and, therefore, it is not subject to review under Executive Order 12866.

Executive Order 14192

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' requires that an agency, unless prohibited by law, identify at least ten 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 ten prior regulations. The final rule is not an Executive Order 14192 regulatory action because it is not significant under Executive Order 12866. Further, the final rule is a deregulatory action under Executive Order 14192 because it would result in potential cost savings for OCC-supervised banks.

Congressional Review Act

For purposes of the Congressional Review Act, OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[93] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[94]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of OIRA finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[95]

OIRA has determined that this final rule is not a major rule. As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects in 12 CFR Part 34

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

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 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, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 2. Amend subpart A by adding § 34.7 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 restrict 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) California: Cal. Civ. Code sec. 2954.8;

(2) Connecticut: Conn. Gen. Stat. sec. 49–2a;

(3) Guam: 11 Guam Code Ann. sec. 106103;

(4) Maine: Me. Rev. Stat. Ann. tit. 9–B, sec. 429; Me. Rev. Stat. Ann. tit. 33, sec. 504;

(5) Maryland: Md. Code Ann., Com. Law secs. 12–109, 12–109.2;

(6) Massachusetts: Mass. Gen. L. ch. 183, sec. 61;

(7) Minnesota: Minn. Stat. Ann. sec. 47.20, subd. 9;

(8) New York: N.Y. Gen. Oblig. Law sec. 5–601;

(9) Oregon: Or. Rev. Stat. secs. 86.245, 86.250;

(10) Rhode Island: 19 R.I. Gen. Laws sec. 19–9–2;

(11) United States Virgin Islands: V.I. Code tit. 9, sec. 67;

(12) Utah: Utah Code Ann. sec. 7–17–3;

(13) Vermont: Vt. Stat. Ann. tit. 8, sec. 10404; and

(14) Wisconsin: Wis. Stat. secs. 138.051, 138.052.

Jonathan V. Gould,

Comptroller of the Currency.

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[93] 5 U.S.C. 801 *et seq.*

[94] 5 U.S.C. 801(a)(3).

[95] 5 U.S.C. 804(2).