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Office of the Comptroller of the Currency
via: Federal eRulemaking Portal

Letter in Opposition to Proposed Rule on Real Estate Lending Escrow Accounts (OCC-2025-0736) and Proposed Preemption Determination (OCC-2025-0735)

To whom it may concern:

For more than fifty years, New York and many other states have protected their consumers by mandating that mortgage lenders—whether state or federal, bank or nonbank—pay minimum amounts of interest to consumers when the lenders require those consumers to deposit funds into mortgage-escrow accounts, thereby providing minimum compensation to consumers who are forced to tie up substantial funds in advance of mortgage payments coming due. These state laws are consistent with both strict limitations on bank preemption enacted by Congress and the lack of express authorization in federal law for national banks to operate mortgage-escrow accounts without regard for generally applicable state laws, as numerous courts have held. On December 30, 2025, however, the Office of the Comptroller Currency published a proposed rule to define "escrow account" as a matter of federal bank regulation and provide national banks with authority to set the terms of such accounts (the "Escrow Rule")[1] and a proposed rule purporting to determine that, upon enactment of the Escrow Rule, the laws of New York and eleven other states will be preempted (the "Preemption Rule").[2] Together, the OCC's recently proposed rules will deprive states of their legitimate, constitutional authority to protect their consumers, including in their interactions with national banks. We, the undersigned attorneys general for New York, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina,

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1 OCC, *Real Estate Lending Escrow Accounts*, 90 Fed. Reg. 61099 (Dec. 30, 2025).

2 OCC, *Preemption Determination: State Interest-on-Escrow Laws*, 90 Fed. Reg. 61093 (Dec. 30, 2025).

Oklahoma, Oregon, Rhode Island, Vermont, Virginia, and Washington, and the undersigned state banking regulators for New York, California, Hawaii, Maryland, North Carolina, and Oregon, oppose the Escrow Rule and the Preemption Rule, and urge the OCC to abandon them.

I. Congress Has Never Interfered with States' Abilities to Mandate Minimum Interest Payments on Mortgage-Escrow Accounts

The banking system in the United States today was first put in place in 1864 when Congress enacted the National Bank Act, thereby "establishing the system of national banking still in place today."[3] That Act authorized national banks to be exclusive issuers of "a national currency in the form of national bank notes,"[4] and granted a list of other enumerated powers, including the power to accept deposits and make non-real-estate loans, along with "such incidental powers as shall be necessary to carry on the business of banking."[5] However, national banks were "expressly prohibited" from "making mortgage loans."[6] The National Bank Act thus said nothing about national banks' powers related to mortgage-escrow accounts or preemption of state laws governing such accounts—a fact that did not change even after Congress removed limitations on national banks' ability to make real-estate loans upon the creation of the Federal Reserve Banks in the early 1900s.[7] The result was a "mixed state/federal regime" in which the federal government "exercises general oversight" of national banks "while leaving state substantive law in place."[8]

In the 1930s, state and national banks began to employ mortgage-escrow accounts in connection with mortgage lending, requiring consumers to deposit funds into such accounts to cover annual property taxes and insurance payments, thereby avoiding defaults.[9] However, abuses in these markets spread, such as banks requiring deposit of larger amounts ever further in advance of when payments were due, thereby obtaining "interest-free" loans from their own consumers.[10] To address these and other abuses, Congress enacted the Real Estate Settlement Procedures Act of 1974, or RESPA, which "extensively regulates national banks' operation of escrow accounts" and "sets out the general terms for national banks that operate escrow accounts,"[11] such as limiting the maximum balances and the circumstances upon which banks can require deposits.[12]

Around this same time, numerous states enacted laws to protect consumers from abuses in the mortgage-escrow market.[13] On April 1, 1974, for example, New York enacted a law

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3 *Watters v. Wachovia Bank, N.A.*, 550 U.S.1, 10 (2007).

4 Arthur E. Wilmarth, Jr., *The Dodd-Frank Act's Expansion of State Authority to Protect Consumers of Financial Services*, 36 J. CORP. L. 893, 945 (2011).

5 12 U.S.C. § 24.

6 *Watters*, 550 U.S.at 23 (Stephens, J., dissenting).

7 12 U.S.C. § 371(a).

8 *Cuomo v. Clearing House Ass'n, L.L.C.*¸557 U.S. 519, 530 (2009).

9 Congressional Research Service, *Mortgage Escrow Accounts: An Analysis of the Issues* 2–3, 98-979E (1998).

10 *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1173 (8th Cir. 1995).

11 *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 211 (2024).

12 12 U.S.C. § 2609.

13 CRS, *Mortgage Escrow Accounts*, *supra*, at 3–4.

"requiring the payment of interest on certain escrow accounts."[14] Specifically, Section 5-601 of New York's General Obligations Law requires state or national banks to pay at least 2% interest on mortgage-escrow accounts.[15] These mandatory minimum interest laws balance the interests of all parties, as banks pay interest for the benefit of the "security protection" provided by an escrow account.[16] And nowhere in RESPA, enacted during this era, did Congress purport to authorize national banks to operate mortgage-escrow accounts in a manner that disregarded generally applicable state laws, including laws imposing minimum interest payments.

To the contrary, the sole subsequent federal legislation that concerns mortgage-escrow accounts embraced minimum interest mandates as effective tools for protecting consumers. In particular, nearly two decades ago, Congress, seeking to curtail "a number of abusive and deceptive practices related to escrow accounts, mortgage servicing, and appraisal practices,"[17] amended the Truth-in-Lending Act to confirm that housing lenders, including national banks, must pay interest on mortgage-escrow accounts if such interest is required by any "applicable State or Federal law" and must do so "in the manner" set forth "by that applicable" law.[18]

II. Congress Has Expressly Limited the Scope of Bank Preemption to State Laws that Significantly Interfere with Bank Operations

States' decades-long enforcement of minimum interest laws and regulations for mortgage-escrow accounts accords with the United States' long history of dual banking. The dual-banking system, which has existed unbroken for many decades, is one that involves "both federal regulation of state banks and state regulation of national banks."[19] Beginning just after enactment of the National Bank Act, the Supreme Court confirmed that national banks remain "subject to the laws of the State and are governed in their daily course of business far more by the laws of the State than of the nation."[20] For the century that followed, states enforced applicable laws against the Banks in the same manner as any multi-state corporation.[21] As the Supreme Court stated unequivocally: "States . . . have always enforced their general laws against national banks—and have enforced their banking-related laws against national banks for at least 85 years."[22] Thus, the

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14 Laws of New York, 1974, Chp. 119, § 2.

15 N.Y. G.O.L. § 5-601. More than a dozen other states have similar laws, *See, e.g.*, Cal. Fin. Code § 50202; Conn. Gen. Stat. § 49-2a; Iowa Code § 524.905; Me. Stat. tit. 9-B, § 429; Md. Code Ann., Com. Law § 12-109; Mass. Gen. Laws ch. 183, § 61; Minn. Stat. § 47.2; N.H. Rev. Stat. Ann. § 397-a:9; Or. Rev. Stat. § 86.245; 19 R.I. Gen. Laws § 19-9-2; Utah Code Ann. § 7-17-3; Vt. Stat. Ann. tit. 8, § 10404; Wis. Stat. § 138.052.

16 Or. Rev. Stat. § 86.245(2).

17 H.R. Rep. 111-94, at 49 (2009).

18 15 U.S.C. § 1639d(g)(3).

19 Congressional Research Service, *Federal Preemption in the Dual Banking System* at i, R45726 (May 17, 2019), *available at* https://sgp.fas.org/crs/misc/R45726.pdf.

20 *National Bank v. Commonwealth*, 76 U.S. 353, 362 (1869).

21 *See generally* Arthur E. Wilmarth, Jr., *The OCC's Preemption Rules Exceed the Agency's Authority & Present a Serious Threat to the Dual Banking System*, 23 ANN. REV. BANKING & FIN. L. 225 (2004).

22 *Cuomo*, 557 U.S. at 534.

Court historically limited bank preemption of otherwise generally applicable state laws to those where such laws "significantly interfered" with national banks' exercise of their powers.[23]

The long (and prosperous) history of dual-banking was significantly disrupted by the OCC's 2004 adoption of rules that first reflected a new, expansive view of bank preemption.[24] Summarily declaring that many broad categories of state law did "not apply to national banks' lending and deposit taking activities," the OCC's 2004 rules rejected prior limits placed by the Supreme Court on bank preemption requiring state law to "significantly interfere" with national bank operations, purporting to preempt any "state laws that obstruct, impair, or condition a national bank's ability to fully exercise" its powers.[25] The effect was to create "a regime of field preemption in everything but name."[26] Indeed, the OCC admitted as much when describing its new rules as "substantially identical" to preemption rules adopted under the Home Owners' Loan Act[27]—even though, unlike that law, Congress did not endorse field preemption in the National Bank Act.[28]

The OCC's 2004 rules came under fire a few years after adoption in the wake of the most severe financial recession in the United States since the Great Depression—a crisis caused in significant part by reckless subprime mortgage lending[29] that substantially accelerated at a time when states' ability to legislate against predatory lending had been "effectively gutted"[30] by aggressive preemption of state lending laws.[31] In 2009, the Supreme Court first held that certain aspects of the 2004 rules, including limitations against states ability to enforce generally applicable laws against national banks, were invalid.[32] One year later, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,[33] which overturned the scope of bank preemption articulated by the OCC in its 2004 rules and expressly adopted the more restrictive "significant interference" test set forth in *Barnett Bank*.[34] In doing so, Congress made clear that it

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23 *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 33 (1996).

24 OCC, *Bank Activities and Operations; Real Estate Lending and Appraisals*, 69 Fed. Reg. 1904 (Jan. 13, 2004).

25 *Id*. at 1904, 1910–11; *see also* CRS, *Federal Preemption*, *supra*, at 12.

26 Wilmarth, Jr., *Expansion of State Authority*, *supra*, at 937; *see also* Roderick M. Hills, Jr., *Exorcising McCulloch: The Conflict-Ridden History of American Banking Nationalism & Dodd-Frank Preemption*, 161 U. Pa. L. Rev. 1235, 1278 (2013) (noting that the OCC's "rationale for its 2004 rules . . . institutes a regime of field preemption").

27 *See* 69 Fed. Reg. at 1911 n.56 (citing 12 C.F.R. § 560.2(b)).

28 *Compare Flagg v. Yonkers Sav. & Loan Ass'n*, 396 F.3d 178, 182 (2d Cir. 2005) (holding that the Home Owners' Loan Act preempted the field) *with Cuomo*, 557 U.S. at 534 (no national bank field preemption).

29 *See generally* Fin. Crisis Inquiry Commission, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* at 67–80 (2011), *available at* https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.

30 Nicolas Bagley, *The Unwarranted Regulatory Preemption of Predatory Lending Laws*, 79 N.Y.U. L. REV. 2274, 2275 (2004).

31 CRS, *Federal Preemption*, *supra*, at 14 n.136 (collecting citations).

32 *Cuomo*, 557 U.S. at 535–36.

33 Pub. L. No. 111-203 (2010)

34 12 U.S.C. § 25b(b).

was "revising the standard the OCC will use to preempt state consumer protection laws."[35] Concerned that the OCC's prior, aggressive preemption of state consumer laws had "helped bring the financial system down,"[36] Congress also placed strict limits upon the OCC's power to make future preemption determinations, including requirements that such determinations be supported with "substantial evidence"[37] and limiting judicial deference to the OCC's findings.[38]

Just last year, the Supreme Court first expounded upon the significance of Congress's significant revisions to bank preemption in a case concerning the same New York minimum-interest law that is the target of the Preemption Rule.[39] Confirming that Congress had "ruled out field preemption" in Dodd-Frank,[40] the Court held that bank preemption "must be decided 'in accordance with'" the significant interference test of *Barnett Bank*.[41] In so holding, the Supreme Court declined to adopt the OCC's views, expressed in its unsolicited *amicus* brief before the Second Circuit, that national banks should maintain "[i]ndependence from state direction and control" and thus "local laws that could undermine the powers granted to them" are preempted.[42] To the contrary, the *Cantero* Court held that Congress had rejected any such "categorical test" whose effect would be to "preempt virtually all state laws that regulate national banks."[43]

III. State Minimum Interest Mandates Do Not Significantly Interfere with National Bank Operations and Therefore Are Not Preempted

The combination of (i) a lack of express congressional authority for national banks to set interest rates for mortgage-escrow accounts and (ii) strict limitations on bank preemption put in place by Congress and the Supreme Court have led numerous courts to conclude that state minimum interest laws do not significantly interfere with national banks' operations. In 1975, just a year after adoption, a three-judge panel found that New York's requirement to pay minimum interest on mortgage-escrow accounts "in no way impairs" the purpose of protecting "the mortgagees' interest in the mortgaged property" and thus that any interference with national bank operations was "insignificant."[44] More recently, in the wake of the financial crisis and Congress's enactment of Dodd-Frank, the Ninth Circuit explained "Congress's view that creditors, including large corporate banks like Bank of America, can comply with state escrow interest laws without

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35 H.R. Rep. No. 111-517, at 875 (Conf. Rep.); *see also* S. Rep. No. 111-176, at 175 (Dodd-Frank preemption provisions were intended to "undo[] broader standards" the OCC adopted "in 2004").

36 S. Rep. No. 111-176, at 166.

37 12 U.S.C. § 25b(b) & (c).

38 *Id*. § 25b(b)(5).

39 *Cantero v. Bank of Am., N.A.*, 602 U.S. 205 (2024).

40 *Id*. at 213.

41 *Id*. at 213–14 (quoting 12 U.S.C. § 25b(b)).

42 OCC, *Amicus Curiae* at 7, *Cantero v. Bank of Am., N.A.*, No. 21-400 (Jun. 15, 2021).

43 602 U.S. at 220–21.

44 *Fed. Nat'l Mortg. Ass'n v. Lefkowitz*, 390 F. Supp. 1364, 1369 (S.D.N.Y. 1975).

any significant interference with their banking powers."[45] And just a few months before publication of the December 30, 2025 proposed rules, the First Circuit held that Rhode Island's minimum interest law—which the Preemption Rule proposes to find preempted[46]—does not "significantly interfere with [a national bank]'s exercise of its federal-banking powers."[47]

Remarkably, the Preemption Rule does not grapple with either the holdings or rationales of these recent decisions, instead proclaiming in the face of judicial unanimity that "there remains substantial uncertainty" whether state minimum interest mandates significantly interfere with national bank operations.[48] This is both untrue and unjustified. For one, the sole conflict cited in the Preemption Rule is the Second Circuit's decision in *Cantero*, which was overturned by the Supreme Court. Moreover, the "closest analogy" to the minimum interest mandates for mortgage-escrow accounts are state escheatment laws,[49] which the Supreme Court held were not preempted despite requiring national banks to turn over funds to the state when they would have preferred to hold the money and earn interest.[50] Finally, the laws of New York and other states simply lack any of the hallmarks of significant interference identified in existing precedent: they do not prohibit the exercise of powers that have been expressly granted[51]; they do not prevent national banks from doing anything "specifically selected" by Congress[52]; and they are not so harsh or unusual so as to deter consumers from using national banks or their mortgage-escrow accounts.[53]

The Preemption Rule's brief argument for why New York's law and the laws of more than a dozen states are preempted also is utterly meritless. In the wake of Dodd-Frank, the Supreme Court has explained that "addressing preemption questions" requires taking "account of" its prior decisions "and similar precedents."[54] The Preemption Rule cites a single decision, *Franklin National Bank of Franklin Square v. New York*,[55] but its reliance on that opinion suffers from multiple defects. For one, *Franklin* involved a complete prohibition on the use of the term

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45 *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1196 (9th Cir. 2018). The *Lusnak* decision was subsequently sustained by a different panel of the Ninth Circuit following the Supreme Court's *Cantero* decision. *See Kivett v. Flagstar Bank, FSB*, 154 F.4th 640, 649 (9th Cir. 2025) ("*Lusnak* is not clearly irreconcilable with *Cantero*").

46 Preemption Rule, *supra*, at 61097.

47 *Conti v. Citizens Bank, N.A.*, 157 F.4th 10, 28 (1st Cir. 2025).

48 Preemption Rule, *supra*, at 61094 & n.7.

49 *Lefkowitz*, 390 F. Supp. at 1369.

50 *See Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 251–52 (1944) (holding that states "may maintain and apply" escheatment laws because they are unlikely to deter depositors "from placing their funds in national banks" any "more than would the tax laws, the attachment laws" or many other generally applicable state laws).

51 *See Barnett Bank*, 517 U.S. 25, 27–28 (1996) (state prohibition on selling insurance preempted by federal law providing that national banks may sell insurance); *see also Fidelity Fed. S&L Ass'n v. de la Cuesta*, 458 U.S. 141, 146–47, 155 (1982) (state prohibition on enforcement of "due-on-sale clause" preempted by federal regulation permitting national banks to include "due on sale" clauses in contracts and enforce those clauses).

52 *See Franklin Nat'l Bank of Franklin Square v. New York*, 347 U.S. 373, 378 (1954) (state prohibition on advertising "savings" accounts preempted by federal law authorizing the offering of savings accounts).

53 *See First Nat'l Bank of San Jose v. California*, 262 U.S. 366, 367–70 (1923) (state abandonment law operated in "an unusual way" that was "incompatible" with federal authority to accept deposits from consumers).

54 *Cantero*, 602 U.S. at 215–16.

55 347 U.S. 373 (1954).

"savings" in advertising despite Congress having used that precise term to authorize national banks to offer savings accounts and that term being most closely associated with the type of account[56]; by contrast, Congress has never authorized national banks to operate mortgage-escrow accounts without regard for state law. Moreover, state minimum interest mandates are non-discriminatory and place national banks on equal competitive footing with all market participants, whereas the "large record" of real-world "consequences" in *Franklin*[57] demonstrated that the state advertising prohibition, which applied only to national banks, had resulted in a "crippling obstruction" that had restricted national banks "tremendously in obtaining savings deposits" as compared to their competitors.[58] Finally, the Preemption Rule's legal argument—that national banks must be able to "effectively exercise" their escrow-related powers with the "discretion to set the terms and conditions"[59]—is effectively equivalent to the "broad[] standards adopted by . . . the OCC in 2004" that Congress sought to undo in Dodd-Frank[60] and which the Second Circuit employed[61] before being overturned by the Supreme Court for lacking "nuanced comparative analysis."[62]

This latter point is independently fatal to the Preemption Rule: Congress instructed that the OCC may preempt state laws only after genuinely assessing "the impact of a particular State consumer financial law on any national bank,"[63] and supporting that determination with "substantial evidence, made on the record of the proceeding" that "supports the specific finding regarding" preemption.[64] As the Supreme Court subsequently expounded in *Cantero*, the OCC "must make a practical assessment of the nature and degree of the interference caused by a state law."[65] The Preemption Rule does no such thing; instead, it engages in speculation and hypothetical: "*If, for example*," a mandatory minimum law makes mortgage-escrow accounts unprofitable under "*variable* business conditions," then "this *may cause*' national banks to adjust lending practices.[66] This is hardly the sort of "relevant evidence" that would cause "a reasonable mind" to "accept as adequate to support a conclusion," which the Supreme Court has long held is necessary to satisfy the substantial evidence test under the Administrative Procedure Act.[67]

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[56] *See Cantero*, 602 U.S. at 220 n.3 (describing *Franklin* as having reasoned that the state law "interfered with" national banks' "ability to use a 'particular label' that federal law 'specifically selected'").

[57] 347 U.S. at 376.

[58] *People v. Franklin Nat'l Bank of Franklin Square*, 105 N.Y.S.2d 81, 87–95 (N.Y. Sup. Ct. 1951).

[59] Preemption Rule, *supra*, at 61097.

[60] S. Rep. No. 111-176 at 175.

[61] *See Cantero v. Bank of Am., N.A.*, 49 F.4th 121, 131 (2d Cir. 2022) (asserting that bank preemption "not a question of the 'degree' of the state law's effects on national banks, but rather of the kind of intrusion").

[62] *Cantero*, 602 U.S. at 220.

[63] 12 U.S.C. § 25b(b)(3).

[64] *Id*. § 25b(c).

[65] 602 U.S. at 219–20.

[66] Preemption Rule, *supra*, at at 61097 (emphasis added).

[67] *Richardson v. Perales*, 402 U.S. 389, 401 (1971).

IV. The Proposed Rule Is Contrary to Law and a Mere Pretext To Subvert Congressional Limitations on Bank Preemption

Tacitly conceding the lack of any sound basis to preempt the mandatory minimum interest laws of New York or more than a dozen other states under existing law and precedent, the Preemption Rule attempts to end run Congress and Dodd-Frank by relying on the simultaneously proposed Escrow Rule that purports to "codify" national bank authority to offer mortgage-escrow accounts without regard for generally applicable state laws such as minimum interest mandates.[68] This transparent gambit to avoid congressional limits on bank preemption is unlawful.

There can be no dispute that Congress has never authorized national banks to operate mortgage-escrow accounts without regard to generally applicable state laws. At enactment, the National Bank Act barred national banks from mortgage lending entirely. And when Congress subsequently adopted comprehensive reform governing national banks' use of mortgage-escrow accounts, it did not grant authority to disregard generally applicable state law; to the contrary, RESPA expressly provides that federal law "does not annul, alter, or affect, or exempt" national banks "from complying with the laws of any State" except "to the extent those laws are inconsistent" with the federal statute.[69] "Thus, state laws that are not inconsistent with RESPA are not preempted by RESPA."[70] And finally, decades after the mandatory minimum interest laws of New York and other jurisdictions were enacted, Congress confirmed that such laws must be followed by national banks, including in circumstances involving subprime mortgages.[71]

While Congress has not authorized national banks to disregard mandatory minimum laws, Congress has clearly explained when national banks may operate without regard to generally applicable state laws: when those laws "significantly interfere" with national bank operations.[72] As shown above, however, courts already have found that state laws mandating minimum interest on mortgage-escrow accounts do not significantly interfere with national bank operations. Thus, under existing law, the OCC is barred from preempting these state laws.

To circumvent these limitations, the OCC proposes to create conflicting federal law authorizing national banks to offer mortgage-escrow accounts that do not pay interest[73]—not because state mandatory minimums significantly interfere with national bank operations, but rather under the guise of providing "flexibility" for national banks' "business judgment," for which the OCC asserts supposedly "broad authority to prescribe" rules to enshrine.[74] Indeed, well aware that adoption of a proposed rule merely to circumvent Congress's limits on bank preemption would be unlawful, the Escrow Rule studiously avoids discussing state laws mandating minimum interest

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68 *See generally* Proposed Rule, *supra*.

69 12 U.S.C. § 2616.

70 *Best v. Newrez LLC*, No. 19 Civ. 2331, 2020 WL 5513433, at *22 (D. Md. Sep. 11, 2020).

71 15 U.S.C. § 1639d(g)(3).

72 12 U.S.C. § 25b(b)(1)(B).

73 *See* Preemption Rule, *supra*, at 61096 (repeatedly citing "direct conflict" between Escrow Rule and state law).

74 Proposed Rule, *supra*, at 61101.

payments for mortgage-escrow accounts at all.[75] However, in the absence of that discussion, the Escrow Rule is unable to cite any interference with national banks' flexibility or ability to offer mortgage-escrow accounts, thereby failing the basic requirement under the Administrative Procedure Act to make a decision that is "reasonable and reasonably explained."[76]

In fact, the purpose of the Escrow Rule, which was published on the same date as the Preemption Rule, is singular: to manufacture out of thin air a conflict between federal and state law. Indeed, the Preemption Rule admits as much by assuming that the "concurrently proposed rulemaking" reflected in the Escrow Rule "will be finalized as proposed."[77] The OCC, however, cannot adopt the Escrow Rule based on the pretext of codifying "flexibility" when no barrier to flexibility exists (other than, of course, the state minimum interest mandates the OCC seeks to preempt).[78] This is particularly true here because Congress in RESPA "indicated that laws giving *greater* protection to the consumer are not to be found inconsistent with" federal law.[79]

Indeed, were the OCC's approach to stand, it would effectively nullify the limits on bank preemption that Congress enacted in Dodd-Frank. As reflected in the Preemption Rule, anytime a state law affects national bank operations, the OCC, citing its supposed "broad authority to prescribe regulations that codify . . . flexibility" for national banks,[80] could simply conjure into existence new federal regulations permitting national banks to override state laws. Thus, Congress's command that the OCC may find a state law preempted only where such a law "significantly interferes" with national bank operations is replaced by the OCC's ability to adopt preemptive rules to protect national bank flexibility or business judgments, effectively reverting to the OCC's prior 2004 preemption rules—a standard Congress expressly rejected.[81]

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75 *See generally id*.

76 *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

77 Preemption Rule, *supra*, at 61096 n.42.

78 *See Dep't of Comm. v. New York*, 588 U.S. 752, 781–85 (2019) (affirming order invaliding federal agency rule and holding that pretextual rulemaking is "substantively invalid" because "[r]easoned decisionmaking under the Administrative Procedure Act calls for an explanation for agency action" rather than "distraction").

79 *Mazaska Owecaso Otipi Fin., Inc. v. Montileaux*, No. 25 Civ. 5013, 2025 WL 2978840, at *8 (D.S.D. Oct. 22, 2025); *see also id*. (Congress "gave consumers the protections available under RESPA and common law").

80 Proposed Rule, *supra*, at 61101.

81 *See Conti*, 157 F.4th at 26 (expressly rejecting the "argument that [bank] preemption applies whenever a state law dictates the terms of banking product in a manner that limits a national bank's flexibility and efficiency.").

For all the above reasons, the OCC should abandon its proposed Escrow Rule and its related Preemption Rule, both of which ignore established law and precedent, cannot be squared with existing practice, and undermine congressional limits on bank preemption.

Respectfully submitted,

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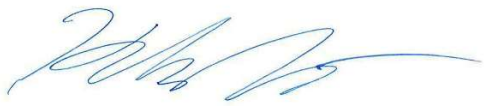

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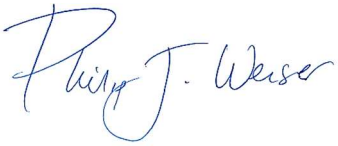

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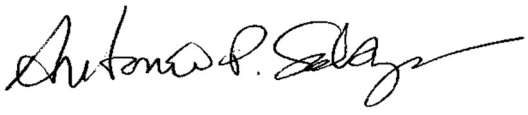

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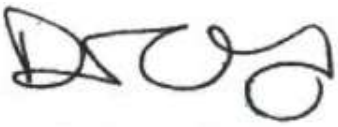

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