KPMG

Regulatory Alert

Regulatory Insights for Financial Services

June 2026

Preemption: OCC Final Actions Related to Escrow Accounts and Charges/Fees

KPMG Regulatory Insights

— ***State-level Activity/Positioning:*** *Aligning with and supporting the Administration's push for federal preemption, the OCC's final rules aim to protect federally authorized banking powers from state activity.*

— ***Legal challenges:*** *The OCC states that the rulemakings are intended to clarify and reaffirm "longstanding" bank authorities but adds that there remains substantial uncertainty for stakeholders in light of ongoing litigation.*

The Office of the Comptroller of the Currency (OCC) has taken several actions recently related to the authorities of national banks and federal savings association (collectively, banks) and federal preemption of state laws. The actions include:

1. Two final rules, including a preemption determination, regarding real estate lending powers related to the payment of interest on funds held in escrow accounts. Both rules become effective on June 18, 2026.
2. An interim final rule and an interim final order regarding banks' power to charge non-interest charges and fees even if those fees are set by or in consultation with a third party. Both actions become effective June 30, 2026; a final rule will be forthcoming thereafter.

1. Actions Related to Interest Paid on Escrow Accounts

Final Rule: Real Estate Lending Escrow Accounts

Adopting its December 2025 proposal without change, the OCC amends its real estate lending and appraisals regulations (applicable to national banks) and its lending and investment regulations (applicable to federal savings associations) to codify what the OCC describes as "longstanding and recognized powers" of banks to establish or maintain real estate lending escrow accounts and to exercise flexibility in making business judgments as to the terms and conditions of those accounts.

In the final rule, the OCC:

— Adds a definition for an "escrow account" used by national banks as "an account established in connection with a loan or extension of credit secured by a lien on interest in real estate in which the borrower places funds for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property."

— Codifies that the powers of national banks include establishing and maintaining escrow accounts in connection with real estate loans. The terms and conditions of such escrow accounts are business decisions to be made by each national bank in its discretion. Such terms and conditions include but are not limited to:
  - Investment of escrowed funds
  - Fees assessed for the provision of such accounts
  - Whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account

Note: The final rule defines "escrow accounts" and codifies escrow powers in the context of federal savings associations in substantially similar terms.

The OCC notes that its rationale is grounded in statutes such as the National Bank Act, the Federal Reserve Act, and the Home

Owners' Loan Act (HOLA). It adds that although this final rule will impact a substantial number of OCC-supervised institutions, it does not impose any new mandates.

Final Preemption Determination: State Interest-on-Escrow Laws

The OCC finalized its preemption determination concluding that federal law preempts state laws that restrict the flexibility of banks to decide whether and to what extent to (1) pay interest or other compensation on funds placed in real estate escrow accounts; or (2) assess fees in connection with such accounts.

The determination is specifically directed toward interest-on-escrow laws in fourteen states/territories that purport to apply to national banks (California, Connecticut, Guam, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Utah, Vermont, Wisconsin, and the U.S. Virgin Islands.) The OCC has concluded that although the provisions vary to some degree these state laws deprive banks of the flexibility to exercise discretion with regard to escrow accounts (now codified in a final rule) by (1) requiring the payment of interest on funds deposited in certain real estate escrow accounts; and (2) in some cases, restricting the assessment of fees in connection with such accounts.

2. Actions Related to Non-Interest Charges and Fees

Interim Final Rule; Interim Final Order

The OCC recently issued an interim final rule and interim final order clarifying what the OCC again describes as "longstanding powers under federal law" for banks (i.e., national banks and federal savings associations) to charge non-interest charges and fees, including interchange fees from credit and debit card transactions, regardless of whether those fees are set by the bank or a third party. The interim final rule would:

- Specifically include interchange fees as a type of non-interest charge or fee banks may impose.
- Add a definition of "charge" that clarifies:
    - "Charge" means to assess, collect, impose, levy, receive, reserve, take, or otherwise obtain, including through a fee sharing or similar economic relationship.
    - Banks may take such actions directly or through intermediaries, partners, payment networks, interchanges, or other third parties.

The interim final order concludes that federal law preempts an Illinois state law - the Illinois Interchange Fee Prohibition Act (IFPA) - which goes into effect on July 1, 2027. As summarized by the OCC, the IFPA purports to:

- Prohibit national banks and Federal savings associations from charging or receiving interchange fees on the tax and gratuity portions of payment card transactions.
- Restrict the use of payment card transaction data.

The interim final rule and interim final order provide that banks are neither subject to nor required to comply with the IFPA. The comment period for the rule and the order closes on May 29, 2026, and each is scheduled to go into effect June 30, 2026.

Notably, the National Credit Union Administration (NCUA) has issued an interim final rule that similarly asserts that federal law preempts the Illinois law banning the collection of interchange fees on taxes and tips.

For more information, please contact Laura Byerly or Todd Semanco.

Contact

Laura Byerly
Managing Director
Regulatory Insights
lbyerly@kpmg.com

Brian Hart
Principal
Risk, Regulatory and Compliance
bhart@kpmg.com

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