February 25, 2026

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: Preemption Determination: State Interest-on-Escrow Laws [Docket ID OCC-2025-0735]
Real Estate Lending Escrow Accounts [Docket ID OCC–2025–0736]

Dear Chief Counsel:

The Community Home Lenders of America (CHLA)[1] is writing to oppose two proposed rules issued by the Office of the Comptroller of the Currency ("OCC"): Preemption Determination: State Interest-on-Escrow Laws ("preemption determination") and Real Estate Lending Escrow Accounts ("escrow rule"). We ask that both be withdrawn immediately.

The escrow rule creates an unsubstantiated "new" national bank power solely as a pretext for the corresponding preemption determination. We can't find any evidence that action is contemplated within the intent of the National Bank Act ("NBA"), and it does appear to circumvent decades of judicial precedent.

As you know, in 2010, Congress codified Section 25b of the NBA, which authorizes preemption only where a state law "prevents or significantly interferes" with the exercise of a national bank power, applying the standard articulated in *Barnett Bank*. The proposed preemption determination does not appear to meet the substantive and procedural requirements applicable to preemption determinations under Section 25b – a standard reaffirmed in the recent *Cantero* decision. Rather than making a detailed

[1] CHLA is the only national trade association focused exclusively on small and mid-sized independent mortgage banks (IMBs).

case, the OCC's proposed preemption determination makes an academic one with respect to national bank powers, falling far short of the actual "prevents or significantly interferes" requirements articulated by statute and the Supreme Court.

We are advised that based on a number of cases, courts have found that state interest-on-escrow laws do not significantly interfere with escrow account powers. If the OCC had laid out in more detail its analysis under Section 25b, we believe this detail would have pointed to the same conclusion.

The state interest-on-escrow laws have in place for decades, with some dating back 50 years. Courts repeatedly uphold these state interest-on-escrow laws against preemption challenges, including recent post-*Cantero* court decisions that repeatedly find that these laws do not "prevent or significantly interfere" with national bank escrow account powers.

The "prevents or significantly interferes" standard required by the courts and the NBA, along with the analysis of state law, is a purposefully high bar to preemption. Congress set this standard to balance the convenience of a national, dual-banking framework for financial services with the clear intent that states retain their authority to set appropriate consumer protections, preserving local economic accountability. Congress understood that certain state consumer financial laws should apply to all financial intermediaries, ensuring that economic prosperity is grounded a basic set of fair treatment for US families and that financial services are more likely to uniformly meet the expectations and needs of local communities

The OCC's proposed rules, by contrast, would deny homeowners interest payments on their own hard-earned money – purportedly to reduce "unnecessary burden" on some of the nation's largest banks. At a time when many Americans are struggling to afford their own home, the OCC is prioritizing the operational convenience of large banks over the interests of those banks' customers. Not only is this discordant with the current Administration and Congressional priorities of supporting Main Street growth and tackling housing affordability, it is precisely the type of short-sighted federal overreach that led Congress to limit the OCC's authority to preempt state laws in the first place. The OCC's new "unnecessary burden" standard, which would preempt consumer protection laws that it finds "inefficient," inflexible," or "unusual" is also clearly inconsistent with the statutory bar of significant interference.

The taking on of a mortgage to buy and own a home, which over time can appreciate meaningfully, is the largest asset for the vast majority of Americans, most of whom do not own stocks and bonds; in the process, such home financing has to balance the policy needs of the lenders and servicers with that of the American families' need for fair treatment and fair dealing.

The two proposed rules violate these precepts in two major ways. First, the payment of interest on escrow is a market-driven way to protect American families from the situation where banks, many of them quite large, otherwise have the clear economic incentive to "over escrow" and earn a "free float" on the balances. In this situation, even a modest over-escrow per family can be rolled up by the largest banks into untold tens of millions of dollars. The second issue here is that large banks will by definition gain an advantage over small lenders and servicers by virtue of a two-tiered escrow system that favors mega-banks already have built-in economic advantages that are too numerous to list here comprehensively here, but include de facto "Too Big to Fail" subsidies, and favorable treatment from the Fed discount window (as was documented extensively by Bloomberg in 2011.) There is no policy gain in these proposed rules to offset the liability of giving an additional tool for the largest banks to increase economic consolidation at the expense of community lenders.

We urge you to consider our views and consider the legal history of this issue generally, but also to consider how these proposed go well against the current drive in Washington to reduce the costs of homeownership, not to increase them.

Sincerely

COMMUNITY HOME LENDERS OF AMERICA