

# New York State Changes Mortgage Escrow Interest Rate Rule

January 24, 2018

The New York State Department of Financial Services (DFS) has provided New York chartered institutions relief from the requirement to pay a minimum 2.00% interest rate on mortgage escrow accounts.

On January 19, 2018, Maria T. Vullo, Superintendent of DFS, issued an Order under Section 12-a of the New York State Banking Law (the so-called 'Wild Card' authority) changing the standard for the interest rate that must be paid by 'mortgage investing institutions' on escrow accounts established in connection with loans secured by 1-6 family owner-occupied residences or any property owned by a cooperative apartment corporation. As more fully explained below, the previous rule required a minimum interest rate of 2.00% on such accounts. Under the new rule, the rate must be at least equal to the lesser of: (i) 2.00% or (ii) the 6-month yield on U.S. Treasury securities on the last business day of the preceding calendar quarter.

Under §14-b of the Banking Law, a 'mortgage investing institution' is defined as "...any bank, trust company, national bank, savings bank, savings and loan association, federal savings and loan association, private banker, credit union, investment company, insurance company, pension fund, mortgage company or other entity which makes, extends or holds a mortgage on anyone to six family residence occupied by the owner or any property owned by a cooperative apartment corporation..., and located in this state." This section of the Banking Law also defines an 'escrow account' as "...any account established pursuant to an agreement between a mortgagor and a mortgage investing institution whereby the mortgagor pays to the mortgage investing institution or his designee amounts to be used for the payment of insurance premiums, water rents or any similar charges, and shall also include real property tax escrow accounts..."

Each of the above Banking Law provisions cross-references §5-601 and § 5-602 of the New York General Obligations Law (GOL). Section 5-601 prescribes the 'interest [to be paid] on deposits in escrow with mortgage investing institutions', stating in pertinent part: Any mortgage investing institution which maintains an escrow account in connection with a mortgage on anyone to six family residence occupied by the owner or on any property owned by a cooperative apartment corporation, and located in this state shall, for each quarterly period in which such escrow account is established, credit the same with dividends or interest at a rate of not less than two per centum per year. GOL §5-602 applies the same interest rate standard to funds received by a mortgage investing institution in connection with insurance proceeds received as compensation for damages to a residence and held pending their disbursement.

The Wild Card authority cited in the Order was enacted so that the Superintendent is empowered to take special action to ensure that New York State financial institutions are able to exercise any federally-permitted power and thereby remain competitive with their counterpart federally-chartered banking institutions. In the Order, Superintendent Vullo cited the corresponding rules regarding escrow account balances applicable to national banks and federal savings associations and to federal credit unions, none of which specifies a minimal rate of interest on such deposits. While the Superintendent was unwilling to eliminate the obligation to pay interest on escrow accounts, financial institutions that qualify as a mortgage investing institution are permitted to reduce the interest rate for the current quarter and, hopefully, many more.

As of the issuance of this advisory, the DFS had not yet published the Order. When published, it will be available here: [http://www.dfs.ny.gov/legal/wildcard\\_banking/wildcard.htm](http://www.dfs.ny.gov/legal/wildcard_banking/wildcard.htm). The intent to issue such an order was published at the DFS website in the December 15, 2017, weekly bulletin, entitled ORDER UNDER SECTION 12-a OF THE NEW YORK BANKING LAW.

If you have any questions regarding this Order or the requirement to pay a minimum interest rate on mortgage escrow accounts, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at [jsimon@cullenanddykman.com](mailto:jsimon@cullenanddykman.com), or Mandy Xu at 516-357-3850 or via email at [mxu@cullenanddykman.com](mailto:mxu@cullenanddykman.com).

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