



## SUPREME COURT TO HEAR NATIONAL BANK ACT PREEMPTION CASE

The United States Supreme Court has agreed to hear a case involving the National Bank Act and the preemption of state laws that require lenders and holders to pay interest on residential mortgage escrow accounts, known as “escrow-interest statutes.” Federal circuit courts are currently split on whether these laws are preempted by the National Bank Act. Thirteen states have escrow-interest statutes, which generally require lenders engaged in the business of making residential mortgage loans to pay interest on escrow accounts that are required for the payment of a mortgage borrower’s property taxes and insurance premiums. Two petitions for certiorari were filed with the Court, one coming out of the Second Circuit, *Cantero et al. v. Bank of America NA* (“*Cantero*”), and one from the Ninth Circuit, *Flagstar Bank, N.A. v. Kivett* (“*Kivett*”). The Second Circuit ruled in *Cantero* that the National Bank Act preempts New York’s escrow-interest statute, while the Ninth Circuit ruled that the National Bank Act does not preempt California’s escrow-interest statute.

The Court announced this month that it will hear *Cantero* but it has not decided whether it will hear *Kivett*. The Court’s decision could significantly alter the analysis of preemption involving the National Bank Act moving forward, even beyond the interest on escrow account context as covered in *Cantero* and *Kivett*. If the Court adopts the Second Circuit’s application of the legal standard for preemption, banks will have more certainty in applying the National Bank Act preemption standard to state laws. If the Second Circuit’s standard is rejected by the Supreme Court, the decision may cause greater uncertainty regarding the scope of preemption under the National Bank Act.

Firm partner Elizabeth Anstaett has co-authored a detailed analysis of the cases that will be published in the next Conference on Consumer Finance Law Quarterly Report. We will continue to monitor the status of *Cantero* and *Kivett*. We are happy to discuss the various issues of preemption involved with these and other state statutes that affect various types of financial institutions and their programs. □

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