Insights

Tenth Circuit Upholds Colorado's Opt-Out from DIDMCA Interest Rate Exportation Provisions

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On November 10, 2025, the Tenth Circuit Court of Appeals upheld Colorado's legislative opt-out from the federal interest rate exportation provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA"). This decision marks a significant shift in the regulatory landscape for interstate lending by FDIC-insured state-chartered banks and signals potential fragmentation in national lending standards.

Background

DIDMCA's interest rate exportation provisions were enacted to ensure competitive parity between state-chartered financial institutions and national banks, particularly in the wake of *Marquette National Bank v. First of Omaha Service Corp.* (1978), which permitted national banks to apply home-state interest rates to out-of-state borrowers. Section 521 of DIDMCA (codified at 12 U.S.C. § 1831d) preempts state usury laws, allowing state-chartered banks to export interest rates. However, Section 525 provides states with an opt-out mechanism, enabling them to enforce state usury limits for "loans made in such State."

Historically, only Iowa and Puerto Rico have maintained DIDMCA opt-outs, with other states repealing similar statutes.

On June 5, 2023, Colorado became the first state in 40 years to opt-out of Sections of DIDMCA. On March 25, 2024, three major trade associations—the National Association of Industrial Bankers, American Financial Services Association, and American Fintech Council—filed suit in federal district court, seeking to enjoin Colorado from enforcing its new statute on its effective date of July 1, 2044. The plaintiffs argued that the opt-out provision only applies to loans made by banks physically located in Colorado, not to loans made by out-of-state banks to Colorado residents. They asserted that the federal law's intent was to preserve competitive parity and a uniform national lending framework, and that Colorado's interpretation would fragment the market and disadvantage state-chartered banks relative to national banks.

In June 2024, the United States District Court for the District of Colorado granted the trade associations' motion for a preliminary injunction. The district court interpreted "loans made in such State" as referring to the location of the lender or where key lending functions occur, consistent with historical precedence. Colorado immediately appealed the injunction to the Tenth Circuit.

Tenth Circuit's Decision

On November 10, 2025, a divided three judge panel reversed the district court's injunction. The majority, led by Judge Gregory Phillips, held that the phrase "loans made in such State" in DIDMCA's opt-out provision encompasses loans in which either the lender or the borrower is located in the opt-out state. The panel reasoned that the plain text of Section 525 and the structure of DIDMCA supported Colorado's position, and

that Congress intentionally gave states the power to reimpose usury limits for loans connected to their jurisdictions—even at the expense of uniformity.

Judge Veronica Rossman dissented, arguing that the majority's interpretation of “loans made in such State” in Section 525 as encompassing loans where either the lender or the borrower is located in the opt-out state is erroneous. The Section 525 opt-out provision only allows states to forgo parity for their own chartered institutions, not to regulate out-of-state state-chartered banks. Judge Rossman also observed that throughout DIDMCA and Title 12, "made" and "make" refer to a bank's lending activities based on its location or functions, not the consumer’s location. DIDMCA focused on bank regulation, not consumer protection. Judge Rossman expressed concern that majority’s approach threatens national uniformity by permitting multiple states to assert that the same loan is “made” within their borders, yielding conflicting rate caps and undermining Congress’s intent for coherent interstate banking regulation.

Next Steps and Implications for Financial Institutions

The Tenth Circuit’s ruling is not yet effective, pending issuance of the mandate and potential further appellate proceedings, including a possible *en banc* review or a petition for certiorari to the U.S. Supreme Court. However, it remains possible that the ruling could take effect within the coming weeks. State-chartered banks extending loans to Colorado residents, as well as fintech platforms partnering with these institutions, are advised to begin preparing for compliance with Colorado's limits on interest rates and fees.

The decision may prompt other states to pursue DIDMCA opt-outs. Recent consumer advocacy has spurred legislative proposals in Minnesota, Nevada, Oregon, Rhode Island, and other states. Any proposed DIDMCA opt-out legislation may also include "all-in rate cap" and “anti-evasion” provisions.

Krieg DeVault’s Financial Institutions attorneys are closely monitoring further developments and are able to provide counsel to financial institutions on the impact of these changes to their operations.

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