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Colorado's Opt-Out From State Bank Exportation of Interest Rates Is Live

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As of last week, Monday, November 10th, the Tenth Circuit has rescinded a preliminary injunction against a Colorado state law opting-out from DIDMCA and remanded the case back to the United States District Court for the District of Colorado. This means that it is now illegal for out-of-state banks that are not national banks to export interest rates into Colorado.

This development could impact bank-fintech partnership arrangements, to the extent such partnerships provide consumer lending and do not already recognize the interest rate limit of 25% in Colorado. Of course, because of true lender concerns that have been raised in Colorado over the past several years, most bank-fintech partnerships already comply with that interest rate limit. And, if a state bank or bank-fintech partnership has not already adhered to the 25% interest rate limit in Colorado, the rescinding of the preliminary injunction certainly signals that now is the time to do so.

By way of background, in 2023, the Colorado legislature **passed a law** opting out from allowing banks that are making loans to Colorado residents from avoiding Colorado limits on interest rates by exporting the interest rates available in the bank's home state to Colorado. The law was passed in accordance with an opt-out right that exists in Federal law, specifically in the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. §1831d. As we reported in June 2024 (**Why You Should Care About Colorado Attempting to Opt-Out of DIDMCA**), three industry trade associations (the National Association of Industrial Bankers, the American Financial Services Association, and the American Fintech Council) sued the state of Colorado to prevent the law from going into effect and obtained a preliminary injunction. This has meant that out-of-state banks have continued to be able to export the interest rates of their home state into Colorado.

The opinion rendered by the 10th Circuit in National Association of Industrial Bankers v. Weiser, available at 2025 WL 3140623 (November 10, 2025), addressed not just the topic of whether a preliminary injunction should continue, but also the substance of the action brought by the industry trade associations. The Tenth Circuit acknowledged that ". . we read §1831d(a) as preempting state law in two respects: (1) A state bank may charge up to the national discount-plus-one rate regardless of any state interest-rate cap; and (2) a state bank may export interest rates permitted by the state where the bank is located to out-of-state borrowers, even if the rate charged exceeds the rate permitted by the borrower's state." In other words, as we explained in June 2024, "While DIDMCA does allow a state to re-impose its own usury rates for loans made by depository institutions chartered in Colorado to Colorado residents (i.e., to opt-out of DIDMCA), at issue is whether a loan 'made in' Colorado means loans made by the depository institutions that are physically in Colorado, or whether a loan 'made in' Colorado also includes loans made to Colorado borrowers. The Colorado Attorney General and the Administrator of the Colorado Uniform Consumer Credit Code have stated that the new law means that loans that are 'made in' Colorado do indeed include all loans made to Colorado borrowers. The industry trade associations argue otherwise."

In approaching this issue, the Tenth Circuit found that "the opt-out provision is wholly separate" from the preemption language and explained that because it is wholly separate, the opt-out right in DIDMCA applies to both preemption prongs. In other words, while the trade associations argued that the opt-out applies only to the first prong (i.e., the discount-plus-one rate), it does not apply to the exportation of interest rates. Accordingly, the Tenth Circuit opined that such an interpretation intrudes on the states' police power and that it "betrays common sense – no state would ever opt out of §1831d if the opt-out meant that the state would only disadvantage its own banks for loans to out-of-state borrowers." In addition, they concluded that "the statutory purpose establishes . . . that 'loans made in such State' refers to loans in which either the lender of the borrower is located in the opt-out state."