

Tenth Circuit Upholds Colorado's DIDMCA Opt-Out: Implications for State-Chartered Bank Lending and Interest Rate Exportation

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On November 10, 2025, the United States Court of Appeals for the Tenth Circuit issued the long-awaited decision on Colorado's Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) opt-out legislation. In 2023, Colorado enacted H.B. 23-1229 to opt out of DIDMCA §§ 521–523. These provisions provide parity with national banks and allow state-chartered banks to charge interest as allowed in the state they are located and preempt conflicting state laws allowing exporting of those rates to other states. But Section 525 of DIDMCA allowed states to opt out of this federal preemption. Only Iowa and Puerto Rico have opted out until Colorado's enactment which the state asserts would limit interest rate charges from out-of-state state-chartered banks to borrowers in Colorado. The law does not apply to national banks which may export their rates and fees nationwide without any state opt out rights.

The statute's opt out provision is tied to loans made in the opt out state – which until now has not been interpreted by a court.

Uncertainty for Marketplace Lending Programs

On March 25, 2024, three trade associations brought suit in the federal district court of Colorado seeking a declaratory judgment that the law was void and seeking injunctive relief to avoid the implementation of the law. In June 2024, the federal district court granted the preliminary injunction, holding that the loans are “made” where the lender is located and not where the borrower resides. Colorado immediately appealed the case to the Tenth Circuit Court of Appeals, and during the appeal, after the change in federal administrations, the FDIC notably withdrew its prior position in support of the State. In a 2-1 decision on November 10, 2025¹, the Tenth Circuit reversed the lower court's preliminary injunction, holding that DIDMCA's opt-out provision allows states to opt out of federal preemption on “loans made in such State”, and the loan is made where either the lender or borrower are located. As the dissent pointed out, this creates additional uncertainty as the law of two states could apply which could involve different interest rates.

The reversed injunction will remain in place for a short period until the time to file a petition for rehearing expires. The trade associations may request either an *en banc* hearing (review by the full panel of the Tenth Circuit judges for exceptionally important cases) or petition for review by the US Supreme Court.

If the injunction is lifted and the DIDMCA opt-out becomes effective, lending to Colorado residents by out-of-state state-chartered banks (but not national banks) will be limited to the maximum rate available to a Colorado state bank which currently is 21%. The broader concern of the industry is that this decision may encourage other states inclined to pass their own DIDMCA opt-out legislation to pursue such legislation. If additional states opt-out, and their legislation are similarly upheld or the state is within the Tenth Circuit, the uniformity in marketplace lending programs offered by state-chartered banks in reliance on preemption principles will continue to erode, resulting in applying state-specific interest rate limits for consumer lending for states that have passed DIDMCA opt-out legislation. Or there could be a movement toward working with national banks rather than state banks to avoid this issue. Such legislation makes state-chartered banks less attractive as a charter alternative.

Of note, certain general purpose credit cards meeting Colorado's definition are exempt from the opt-out and could spur the providing of revolving credit card products to Colorado residents.

For More Information

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1 *Nat'l. Ass'n. of Ind. Bkrs., et al., v. Weiser*, No. 24-1293 (10th Cir. 11/10/2025).

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