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New Concerns for Bank Fintech Partnerships: 10th Circuit's DIDMCA Decision Is the First Ripple in an Anticipated Wave

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Issued on November 10, 2025, the long-awaited decision from the US Court of Appeals for the 10th Circuit[1] in *National Association of Industrial Bankers v. Weiser* supports Colorado's exercise of its 2023 legislative "opt-out" from the interest rate limitation provisions set forth in the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA). Surprising the banking industry writ large, the decision adds to further uncertainty as to "where a loan is made (originated)," due to the Court's holding that a loan is made where either the bank is located *or* the customer resides for purposes of DIDMCA's opt-out (as such opt-out right is described more fully below). The inclusion of a consumer's residential location in the assessment of where a loan is made disrupts an analysis critical to many state-chartered banks' loan activities, which many in the banking industry had believed was well-settled.

Background

The basis for DIDMCA's passage rests in Congress's desire to "level the playing field" between national banks and state-chartered banks during a period in US history fraught with economic turmoil. Specifically, DIDMCA allowed state-chartered banks to export to borrowers throughout the United States interest rates based upon the bank's "location." In relevant part, the applicable statute provides as follows:

> In order to prevent discrimination against *State-chartered insured depository institutions*, including insured savings banks, or insured branches of foreign banks *with respect to interest rates*, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, *such State bank* or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, *take*, *receive*, *reserve*, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at . . . *the rate allowed by the laws of the State, territory, or*

> *district where the bank is located, whichever may be greater.* (emphasis added) (codified at 12 U.S.C. § 1831d(a)).[2] (emphasis added)

While DIDMCA extended to state-chartered banks the power to export interest rates based upon a state-chartered bank's location,[3] it also contained language that permitted a state to "opt out" of this framework. Specifically, Section 525 of DIDMCA provided as follows:

> The amendments made by sections 521 through 523 of this 12 use I730g title shall apply only with respect to loans made in any State during the period beginning on April 1, 1980, *and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the amendments made by such sections to apply with respect to loans made in such State*, except that such amendments shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made. (emphasis added) (the "Opt-Out Provision").

Prior to 2023, only Iowa had made use of the Opt-Out Provision. However, in 2023, Colorado exercised its rights under the Opt-Out Provision with the passage of CO HB 23-1229, which had an effective date of July 1, 2024.[4] The passage of the Colorado Opt-Out Law meant that state-chartered banks that offered loans to Colorado consumers[5] from offices outside Colorado at rates that complied with restrictions related to *where the bank was located* (most often through bank partnership programs with fintechs operating near-national platforms) could no longer do so; rather, the Colorado Opt-Out Law would require out-of-state banks to comply with Colorado laws applicable to loans when offering loan products to Colorado consumers.

Various banking associations took Colorado to court to enjoin the effectiveness of the Colorado Opt-Out Law, arguing that it was impermissible under its reading of DIDMCA, a position supported by banking agency interpretations and other industry guidance. At the US District Court level, the banking associations obtained a preliminary injunction regarding the Colorado Opt-Out Law, with that court finding that interest rate limitations could only be enforced against lenders located in Colorado, regardless of where the borrower lived. Colorado thereafter appealed.

The 10th Circuit's Opinion in *Weiser*

After acknowledging that the Colorado Opt-Out Law intended to "protect residents from certain abusive financial practices prevalent in rent-a-bank loans," the Court noted that its analysis was one of "first impression"[6] and that it was charged with interpreting a statute that was "not a beacon of

clarity." After a lengthy analysis, however, the Court determined that "absent clear intent from Congress to intrude on [a state's] police powers, we decline to read § 1831d as continuing to preempt the laws of an opt-out state." In viewing a state's opt-out powers through this lens, the Court held that "loans made in such State" refers to "loans in which either the lender or the borrower is located in the opt-out state". It thereafter denied the associations' preliminary injunction request (emphasis in original).

What This Means

The resulting impact from this decision implicates both near-term and longer-term actions related to parties that either directly participate in or fund bank partnerships. Considerations include the following:

1. An appeal by the banking associations seems likely. Such appeal could take the form of a petition for *en banc* review from the 10th Circuit (so that a full panel would rehear the case) or the banking associations could apply for *cert* to the US Supreme Court. However, either path will take considerable time. As of the date of the *Weiser* Opinion, the Colorado Opt-Out Law is effective with respect to state-chartered banks located outside Colorado that lend to Colorado consumers.
2. Any bank partnership program that includes within its scope of "approved states" consumers who reside in Colorado must amend such eligibility definition to remove Colorado. While loans made to Colorado consumers prior to November 10, 2025 (the date the *Weiser* Opinion was published) should likely remain enforceable, any consumer loan issued after November 10 that does not comply with Colorado law is now likely not enforceable.
3. The value of a bank partnership program with a *national bank* has dramatically increased. As noted above, this decision does not apply to national banks. While national banks do not have the extensive footprint that state-chartered banks have in the fintech space and many national banks limit any product offered through a fintech program to a 36 percent APR, there may be further interest now in expanding such programs, particularly in light of the change in leadership at the Office of the Comptroller of the Currency (the primary federal regulatory for national banks and federal savings banks).
4. The *Weiser* Opinion will certainly empower other state legislatures to take actions similar to those taken by the Colorado legislature (with legislatures located in the 10th Circuit likely to be the quickest to adopt such measures). Both interested state attorneys general and consumer advocacy groups are very likely to take this decision to consumer-aligned state legislative committees to advance bills that are similar to or mirror that adopted by Colorado. Fintech lending program participants should carefully monitor these initiatives, as bills can move quickly, particularly where state attorneys general have long felt stymied in their attempts to regulate

consumer financial products offered by state-chartered banks located outside their state's borders.

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1 *National Association of Industrial Bankers v. Weiser*, No. 24-1293 (November 10, 2025) (the *Weiser* Opinion). Notably, the *Weiser* Opinion was 2-1. The 10th Circuit includes the following states: Colorado; Kansas; New Mexico; Oklahoma; Utah; and Wyoming.

2 Note that, based upon various federal court decisions and banking agency interpretations, the term "interest" for purposes of this statutory provision has been read expansively and includes any credit-related cost, such as origination fees and late payment fees.

3 Where a state-chartered bank is located has been interpreted to mean something broader than where its main offices are located by the FDIC in the past. However, in light of the US Supreme Court's decision in Loper Bright v. Raimondo, 124 S. Ct. 2244 (2024), it is difficult to determine the weight such interpretations now carry. *See* the *Weiser* Opinion ("Moreover, even if we were to consider agency interpretations, we would give them little to no deference" and citing *Loper Bright* in support of such position).

4 *See* https://legiscan.com/CO/text/HB1229/id/2812580 (the Colorado Opt-Out Law).

5 The Colorado Attorney General's office publicly stated that the opt-out applied only to consumer loans. *See* the *Weiser* Opinion pp. 11-12 ("Before the opt-out went into effect, Colorado's UCCC Administrator issued an interpretive opinion letter stating that she 'interprets § 5-13-106 to apply only to consumer credit transactions "made" in accordance with" 12 U.S.C. § 1831(d)).

6 The Court specifically noted that there is a "dearth of case law interpreting legal issues that may arise from opting out of § 1831d."

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